DOCUMENT RESUME

ED 223 038 EC 150 339

| | |
|---|---|
| TITLE | Referral, Placement and Appeal Procedures: For Special Education and Related Services. |
| INSTITUTION | Arkansas State Dept. of Education, Little Rock. Special Education Section. |
| PUB DATE | Sep 81 |
| NOTE | 100p.; For related information, see EC 150 340. |
| PUB TYPE | Guides - Non-Classroom Use (055) -- Legal/Legislative/Regulatory Materials (090) |
| EDRS PRICE | MF01/PC04 Plus Postage. |
| DESCRIPTORS | *Disabilities; *Due Process; Elementary Secondary Education; Handicap Identification; Hearings; Individualized Education Programs; *Legislation; Mainstreaming; Program Development; Records (Forms); *Referral; *State Programs; Student Evaluation; *Student Placement |
| IDENTIFIERS | *Arkansas; Education for All Handicapped Children Act; Surrogate Parents |

ABSTRACT

The document contains procedures to implement the policies of the Arkansas State Plan for Special Education, provisions of Act 102 of 1973, as amended, and P.L. 94-142, (The Education for All Handicapped Children Act). Part 1 outlines procedures for Child Find (screening and identification of handicapped children) and referral (including the referral process, referral conference, and referral outcomes). Part 2 addresses evaluation in terms of assessment safeguards, comprehensive evaluation components, specialized evaluation, evaluation procedures for suspected specific learning disabilities, the evaluation conference, implementation of the evaluation/programing conference decision, and the independent evaluation. Programing is the focus of part 3 with sections on the individual education plan (IEP), annual review of child progress, and handicapped students placed in/or referred to private schools. Individual protections and procedural safeguards for the areas of prior notice, independent evaluations, confidentiality, consent, enforcement, nondiscriminatory testing, the least restrictive environment, surrogate parents, and hearings are discussed in part 4. A table of activities and timelines for due process hearings is included. Part 5, which makes up more than half of the document, contains sample forms for location, identification, and evaluation. (SW)

**********
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
**********

0696

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

- This document has been reproduced as received from the person or organization originating it.
- Minor changes have been made to improve reproduction quality.
- Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

ED223038

# REFERRAL PLACEMENT & APPEAL PROCEDURES: FOR SPECIAL EDUCATION AND RELATED SERVICES

ARKANSAS DEPARTMENT OF EDUCATION

DON R. ROBERTS
DIRECTOR

1981

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

EC 151339

ARKANSAS DEPARTMENT OF EDUCATION

DR. DON R. ROBERTS, Director

DIVISION OF INSTRUCTIONAL SERVICES

DR. SHERMAN PETERSON, Associate Director

PREPARED BY STAFF

SPECIAL EDUCATION SECTION

DR. F. POLLY COOPER, Coordinator

Technical Assistance provided by Staff of the ARKANSAS CHILD FIND PROJECT
A . F. Aldridge, Director
Project funds provided under EDUCATION OF THE HANDICAPPED ACT, TITLE VI, PART B, Public Law 94.142

SEPTEMBER, 1981

TABLE OF CONTENTS


PART I. CHILD LOCATION AND REFERRAL ..... 1

PART II. EVALUATION ..... 3

PART III. PROGRAMMING ..... 9

PART IV. INDIVIDUAL PROTECTIONS AND PROCEDURAL SAFEGUARDS ..... 12

A. PRIOR NOTICE ..... 12

B. INDEPENDENT EVALUATIONS ..... 13

C. CONFIDENTIALITY ..... 14

D. CONSENT ..... 16

E. ENFORCEMENT ..... 17

F. NONDISCRIMINATORY TESTING ..... 17

G. LEAST RESTRICTIVE SETTING ..... 17

H. SURROGATE PARENTS ..... 18

I. HEARINGS ..... 24

PART V. FORMS ..... 36

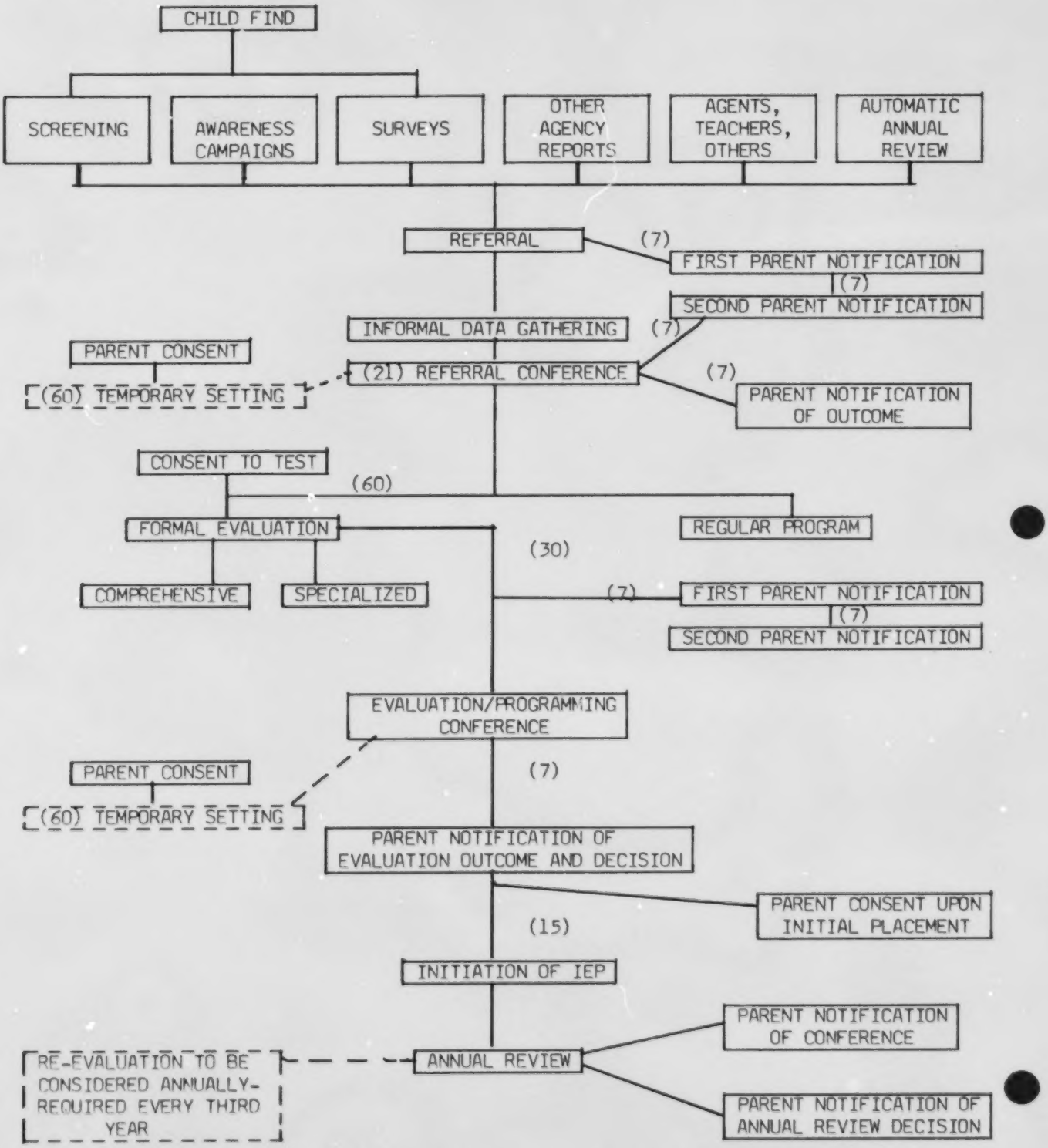
A. SAMPLE FORMS FOR LOCATION, IDENTIFICATION, AND EVALUATION ... 37

B. SAMPLE FORMS FOR PROGRAMMING ..... 63

C. SAMPLE FORMS FOR SURROGATE PARENTS ..... 69

D. SAMPLE FORMS FOR HEARINGS ..... 76

FLOW CHART FOR PLACEMENT PROCEDURES




(NUMBERS INDICATE MAXIMUM NUMBER OF CALENDAR DAYS IN WHICH EVENTS SHOULD OCCUR.)

PROCEDURES FOR REFERRAL, PLACEMENT, AND APPEALS:

SPECIAL EDUCATION AND RELATED SERVICES

INTRODUCTION

These regulations are the procedures to implement the policies of the State Plan for Special Education, provisions of Act 102 of 1973, as Amended, and Public Law 94-142. Each local education agency and each public agency providing educational services for handicapped students shall adopt and implement the policies outlined in this document.

The document consists of five parts. Parts I, II, and III outline procedures for locating, referring, evaluating, and programming for students who receive special education and related services. Part IV is a statement of policies and procedures for provision of individual protections and procedural safeguards as required by P.L. 94-142 and Arkansas Act 102, as Amended. Part V contains sample forms and letters for use in the process of referral, evaluation, placement, and provision of special education and related services. Reference should be made to these forms as the narrative for Parts I through IV is read.

PART I. CHILD LOCATION AND REFERRAL

Efforts to find children who may be eligible for services under State and Federal law consist of two elements: Child Find and referral.

A. Child Find

In discharging its responsibility to ensure that handicapped children who are legal residents of the district are provided with a free appropriate public education, the local school district must make every effort to locate and identify all children who may be handicapped. This effort will include all children served and unserved.

As a part of child location, districts are encouraged to establish routine screening procedures in order to identify children with physical, behavioral, and educational problems which may interfere with their capability of achieving success in school. The screening results may indicate the need for referral for further evaluation. Formal and/or informal screening is suggested upon entry in kindergarten and/or first grade and for children transferring into the district. Within the district's plan for routine screening, it is advisable to include periodic screening throughout the school career. Screening of preschool children and infants for early detection of handicapping conditions should be a part of the effort to locate handicapped children.

Parental permission is not required for screening if the screening effort is directed toward a segment of the school population, i.e., the entire kindergarten as opposed to one child in kindergarten. Only when one child is singled out and tests are administered to that child alone will parental permission be required.

A public awareness campaign must be undertaken to inform the community about the right to and the availability of educational services for handicapped children. Schools should maintain records of all awareness activities.

All relevant records on children receiving special services will be reviewed annually to locate those children who are inappropriately and/or inadequately served by virtue of their present placement. Cooperation and coordination with other community agencies, service organizations, parents, and other individuals should take place to assist districtwide screening and location efforts. Refer to the Child Find Manual for additional information.

B. Referral

Referral is made for the purpose of compiling information about a child experiencing problems which interfere with learning. Initial referral should be made when a child is encountering difficulties in making progress in the regular educational program. Some typical behaviors suggestive of accompanying handicapping conditions are set forth in Program Standards and Eligibility Criteria for Special Education, the companion publication to this document. A behavior checklist or screening inventory may be used to indicate the need for referral.

B.1. Referral Process

Referral may be made by the child's teacher, other school or district educational personnel,

parents, or other individuals with relevant knowledge about the child. Referral may be made at any time.

Written referral is made to the principal of the school in which the child is enrolled. A form similar to Sample Form A is appropriate. In cases where the referral request comes from parents, other agency personnel, or other nonschool individuals, a teacher or other educational personnel completes the Referral Form based on information provided by the referring person. For students enrolled in other agency programs, referral is made to the superintendent or designee of the district of which the child is a legal resident.

Any information which would assist in determining the nature of the child's learning problems and which is presently available should be included along with the Referral Form. Such information in district files may include the screening inventory; home or classroom behavior checklists; existing medical, social, educational data; and/or samples of the child's work. Informal data gathering must be completed prior to the Referral Conference. When appropriate, the student should be informed about the referral and be given an explanation of its purpose.

Within seven (7) calendar days of receipt of the referral, the principal or principal's designee sets a date for a Referral Conference and sends a Parent Notification Referral Letter similar to Sample Form B. In scheduling the Conference, consideration must be given to a time and date convenient to the parent(s). It is imperative that in-person contact be made concerning the referral when there is any reason to suspect that the parents may need assistance in understanding the nature of the referral notice or process. In order to conform with P. L. 94-142 regulations regarding prior notice, Section 121a.504 (300a.504 as newly designated), the options for parent/guardian notification are: (1) use of registered mail, (2) use of certified mail, or (3) first class mail. When telephone contact or home visit follow up is utilized, written documentation is required. At any point from referral through programming when it is necessary to notify parents, one of the three options stated above must be selected.

Should the parents fail to respond to the first written notice within seven (7) calendar days, a second written notice, telephone call, or in-person contact must be made. The second notification will specify that the Referral Conference will be held seven (7) calendar days from the date of the notice. These timelines indicate that within the maximum of twenty-one (21) calendar days from the receipt of referral, the Referral Conference must be held. Documentation of all oral and written contact must be kept in the student's file. If no parent/guardian is available, see procedures for designating surrogate parents, section IV-H of this document.

B.2 Referral Conference

The purpose of the Referral Conference is to review all existing information related to the student and to specify steps to be taken. The Referral Conference must be attended by a minimum of three (3) persons. Attendees must be listed on the Referral Conference Decision Form. Two (2) of the three (3) persons must be the principal or his designee and one teacher directly involved in the education of the student. The Conference may be attended by other individuals who can provide relevant information about the student. Special Education personnel may be included in order to discuss service alternatives. Although the Conference may be held without the parent/guardian, it is very useful for them to be present. Their role is (1) to provide additional information, (2) to learn about educational services, and (3) to become a part of the decision making process. It may be helpful in some cases for the student to be present for all or part of the Conference. When the student participates, no formal data can be gathered from that student during the Conference. The student's role is to provide information on interests and/or opinions.

Parents must be informed of their rights in relation to procedural safeguards. If they are presented at the Referral Conference, sheets similar to Sample Form C and C-1 should be provided and explained to them. If parents are not present at the Conference, information similar to Sample Form C and C-1 should accompany the letter (Sample Form D-1) that serves as parent notification of Referral Conference decision. A phone call or home visit should be made when there is any reason to believe the parents may require assistance to understand the notice.

B.3. Referral Outcomes

Referral decisions made during the Conference are recorded on a Referral Conference Decision Form similar to Sample Form D and signed by the principal or his designee. One professional is designated to assume the responsibility for ensuring that the decision reached at the Referral Conference is implemented.

Options for the Referral Conference Decision include:

1. evaluation (in accordance with Program Standards and Eligibility Criteria for Special Education)

   (a) specialized evaluation

   (b) comprehensive evaluation

2. no evaluation (remain in regular education program with or without other types of program modification).

If the decision is to utilize the referral outcome involving evaluation, a temporary setting for the student may be agreed upon by parent/guardian and the district. Temporary placement is limited to a period of sixty (60) calendar days during which the evaluation must be completed. A temporary setting should only be utilized for one of the following reasons: (1) observed educational needs constitute necessity for immediate intervention and/or (2) diagnostic data gathering is required. The reason(s) for temporary placement must be stated on a Referral Conference Decision Form. An interim IEP should be developed for the child, which sets out the specific conditions and timelines for the temporary setting.

Prior to comprehensive or specialized evaluation, parents must be fully informed about the kinds of tests that will be used. An Informed Consent Statement must then be obtained from the parents/guardian. The Informed Consent Statement also contains permission to release personally identifiable information to third parties as determined by the school officials and consented to by the parents. Forms similar to Sample Form E and Sample Form E-1 are appropriate for meeting this requirement.

Parents must receive written notification of the decision reached at the Referral Conference. If the parent is not present, notification is made within seven (7) calendar days after the Referral Conference by (1) registered mail, (2) certified mail, or (3) first class mail. Sample Form D-1 is appropriate for notification. A phone contact and/or home visit should be made when there is any reason to believe that the parents may require assistance in understanding the notification of the Referral Conference Decision. All parent requests for further information should receive a response at the earliest possible date.

## PART II. EVALUATION

The purpose of evaluation is to determine the presence of a handicapping condition which results in an educational deficit and the corresponding need for specially designed instruction. Evaluation data is utilized in program planning, including the determination of a need for related services. Evaluation procedures must be completed within sixty (60) calendar days of the Referral Conference Decision notification to parents. Consent for evaluation utilizing an Informed Consent Form similar to Sample Form E and E-1 must be obtained before any formal evaluation procedures are completed.

### A. Assessment Safeguards

In order to achieve as thorough an understanding of the needs of the child as possible, the assessment should include information from the school, the home, and relevant community sources. It is important that measures of the child's behavior and/or performance come from a variety of settings and individuals.

As required by P. L. 94-142, the following conditions must be met regarding evaluation of a student prior to placement in a special education program:

*(1) Tests and other evaluation materials:

   (a) Are provided and administered in the child's native language or other mode of communication unless it is clearly not feasible to do so;

   (b) Have been validated for the specific purpose for which they are used; and

   (c) Are administered by trained personnel in conformance with the instructions provided by their producer.

*P. L. 94-142, Section 121a.532

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient.

(3) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure).

(4) No single procedure is used as the sole criterion for determining an appropriate educational program for a child.

(5) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(6) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(7) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

(8) An evaluation of the child, based on procedures which meet the requirements under Section 121a.532, is conducted every three years or more frequently if conditions warrant or if the child's parent or teacher requests an evaluation.

B. Comprehensive Evaluation Components

The components of a comprehensive evaluation should include all measures necessary for determining, as precisely as possible, the barriers to learning presented by the handicapping condition.

Minimum components:

B.1. Academic Performance

This includes tests and measures which evaluate the level of academic skill attainment or educational achievement of the student. Such measures should result in a specification of the student's academic strengths and weaknesses, should indicate specific skill deficit areas, and should provide information on which to base recommendations. All testing should be done by certificated school personnel and/or other appropriate professional personnel certificated and/or licensed by the State of Arkansas. Individual achievement tests are included in this area.

B.2. Intellectual Skills

Intellectual ability of the student must be measured by an individual intelligence test appropriate to the student. Such testing must be done by a certificated educational examiner, licensed psychologist, or licensed psychological examiner.

B.3. Adaptive Behavior and Social Functioning

Adaptive behavior refers to the effectiveness with which the student copes with the natural and social demands of his or her environment. Measures include an evaluation of the degree of the student's independent functioning, ability to communicate, perceptual-motor development, and socialization and self-help skills. Behavioral observation techniques, interviews with the student and others, and adaptive behavior scales are employed. Data should come from several sources.

B.4 Communicative Abilities Assessment or Language Abilities Only

The determination of the level of assessment (e.g. communicative abilities or language only) and appropriate appraisal personnel is made by the Referral Committee. A general language abilities assessment may be conducted by certified school personnel and/or other appropriate professional personnel certificated and/or licensed by the State of Arkansas. If disabilities are suspected or indicated, further assessment(s) for specific disorders in the area of communicative abilities must be conducted by a licensed and/or certificated speech-language pathologist. Such tests determine levels of functioning in regard to speech (fluency, voice, articulation), language, and hearing processes. This includes abnormal comprehension and/or expression of spoken or written language.

B.5. Social History

The history should include existing pertinent data, such as the student's medical records, reports of previous evaluations, reports from other provider agencies, the cumulative school records, and the family information. Contact with the parents should be made to gain data on the student's developmental history and home behavior. Such data should be gathered by the professional designated responsible in the Referral Conference.

B.6. Additional Components

Additional components of the comprehensive evaluation should be included as determined necessary by the team. Some additional components may be:

1. current health status provided by a licensed physician
2. ophthalmological evaluation
3. audiological evaluation
4. neurological evaluation
5. psychiatric evaluation

C. Specialized Evaluation

When it has been determined by the Referral Committee that the unique deficits of the student do not necessitate a comprehensive evaluation, a specialized assessment should be requested and obtained in the area indicated by the available referral information. Any specific or individual component of the comprehensive evaluation may be extracted as a specialized evaluation.

D. *Evaluation Procedures for Suspected Specific Learning Disabilities

1. The evaluation team must be a multidisciplinary team to include:
   a. the child's regular teacher, or if the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age;
   b. at least one person qualified to conduct individual diagnostic examinations of children, such as an educational examiner, psychological examiner, psychologist, etc.;
   c. other professionals deemed necessary at the Referral Conference.
2. The team may determine that a child has a specific learning disability if:
   a. the child does not achieve commensurate with his or her age and ability levels in one or more of the following areas when provided with learning experiences appropriate for the child's age or ability levels:
      (1) oral expression
      (2) listening comprehension
      (3) written expression
      (4) basic reading skill
      (5) reading comprehension
      (6) mathematics calculation
      (7) mathematics reasoning

   The team must determine a severe discrepancy between achievement and intellectual ability in one or more of the above-named areas.

*Summarized from P. L. 94-142, Section 121a.540-543 (300a.540-543 as newly designated)

3. Observation:

At least one evaluation team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting.

4. Written report:

The team shall prepare a written report of the results of the evaluation. The report must include a statement of:

a. whether the child has a specific learning disability,

b. the basis for making the determination,

c. the relevant behavior noted during the observation of the child,

d. the relationship of that behavior to the child's academic functioning,

e. the educationally relevant medical findings, if any,

f. whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services, and

g. the determination of the evaluation team concerning the effects of environmental, cultural, or economic disadvantage.

Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not, the team member must submit a separate statement presenting his or her conclusions.

E. Evaluation Conference

Within thirty (30) calendar days following the completion of all formal evaluation activity, the Evaluation/Programming Conference must be held. Notification of the parents should precede this conference by a minimum of fourteen (14) calendar days. If the parents do not respond to the first notice within seven (7) calendar days, a second notice must be sent. Sample Forms F and F-1 are appropriate for the required notification.

Every effort must be made to inform the parents of the scheduled conference and its purpose. If the parents fail to respond at all, or indicate that they do not wish to participate, the conference must proceed within the thirty (30) calendar day time frame.

The Evaluation/Programming Conference is called and chaired by the professional who was designated at the Referral Conference to assume responsibility for having the decision carried out. It is comprised of a minimum of three (3) members and must include at least one professional competent to review and interpret the evaluation results. Additional members shall include persons such as the following: 1) the student's parent or guardian, 2) the student's present teacher, 3) other professionals or special education personnel who may be involved in providing services. The student may be included in all or part of the Conference, when appropriate.

After reviewing all the data, the persons attending the Evaluation/ Programming Conference will:

(1) Determine whether the student is handicapped. (See Program Standards and Eligibility Criteria For Special Education. If the child does not meet the eligibility criteria, the decision of the committee will be that no special education services are needed.)

(2) Specify the primary handicapping condition if the student is determined to be handicapped.

(3) Design an Individual Educational Plan (IEP). (See III. PROGRAMMING. Also see Sample Form J for developing the I.E.P.)

(4) determine appropriate placement for implementation of the Individual Educational Plan.

Decisions must be based on careful analysis of the evaluation data. Severity of handicapping condition, behavioral characteristics, and emotional needs of the student must be considered in making placement and service decisions.

A continuum of educational services for handicapped students is required. Service settings vary according to the severity of the student's handicap. The placement decision formulated at the Evaluation/Programming Conference must address this continuum of services to assure that the student's Individual Education Plan can be implemented in the least restrictive setting. The continuum of services is as follows:

1. Regular Class - Indirect Service
   (resource consultant or itinerant instructor)

2. Regular Class - Some Direct Instruction
   (itinerant instructor)

3. Regular Class/Resource Room
   (up to 50% of the instructional day in a Resource Room)

4. Self-Contained Class with/without Regular Class
   (minimum of 50% of instructional day in self-contained)

5. No Instruction in Regular Class
   (special Day Service facility)

6. Residential School

7. Hospital Program

8. Homebound Instruction

All decisions made at the Evaluation/Programming Conference are recorded on an Evaluation Conference Decision Form similar to Sample Form G and signed by those attending the conference. It must also be signed by the individual administratively responsible for special services in the district. At least one professional is designated as responsible for ensuring that decisions reached at the Evaluation/Programming Conference are carried out.

Parents/guardians must be provided a written statement of the decision using an appropriate Parent Notification Form explaining the reasons leading to the decision. Sample Form H is an example of an appropriate form.

Notification of the decision must be made within seven (7) calendar days of the Evaluation/Programming Conference if parents are not present. A home contact and/or home visit must be made when there is any reason to believe that the parents may require assistance in understanding the notification or the Evaluation/Programming Conference Decision. All parent requests for further information should be responded to as quickly as possible.

Any pertinent information regarding special education services, associated medical and social services, parent organizations, and parent programs should be provided to parents. Parental assistance in interpretation of evaluative data or other matters pertaining to the educational status of the student must be provided.

F. Implementation of The Evaluational/Programming Conference Decision

Parental consent must be obtained before initial placement of a handicapped student in a program providing special education and related services using a form similar to Sample Form I. Except for evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child. Continuation of placement in the same setting does not require an annual consent form. Parental agreement to the annual review and acceptance of the IEP thereafter implies consent. However, should a change in placement or service delivery occur, an updated placement consent should be obtained.

Fifteen (15) calendar days following parental notification of the Evaluation/Programming Conference Decision, the recommended services shall be provided, unless the parent/guardian objects to the placement. If such an objection is received prior to the expiration of the fifteen (15) calendar day period, the student shall remain in the then current educational placement pending the outcome of the appropriate review procedures. The parent/guardian and the school district may agree to a temporary placement pending the outcome of those procedures.

To the maximum extent appropriate, exceptional children in Arkansas shall be educated with children who are not handicapped. Special classes, separate schooling or other removal of handicapped children from the regular class environment shall occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. Further, it is the policy of the Arkansas Department of Education that handicapped children have the right to be educated with their non-handicapped peers, unless clear evidence is available that partial or full removal is desirable for the welfare of the child or other children.

When an exceptional child must be assigned to a special program, educational goals shall be specified. When these goals are met, the student shall be returned to the most normal setting possible, consistent with the child's capabilities and educational needs.

G. Independent Evaluation*

The local school district shall inform parents at the Evaluation/Programming Conference that they have the right to obtain an independent evaluation at public expense if they disagree with the evaluation provided by the local school district. However, the local school district may initiate a hearing (see Part IV, Section I) to show that its evaluation is appropriate. If the hearing decision is that the evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense. If the parent obtains an independent evaluation at his or her own expense, the results of the evaluation:

1. must be considered by the State and local educational agency in any decision made with respect to the provision of a free appropriate public education to the child, and

2. may be presented by either party as evidence at a hearing regarding that child.

If a hearing officer requests an independent evaluation as part of a hearing, the cost of the evaluation must be at public expense. Any and all evaluations conducted at public expense (including independent evaluations) must be conducted by personnel licensed and/or certificated by the appropriate regulatory agencies and/or boards according to Arkansas law.

*For the purposes of this section, "independent evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

PART III. PROGRAMMING

Programming consists of the development and review of individual educational plans for each student receiving special education and related services. It is the responsibility of the Evaluation/Programming Conference members to review all data compiled during the referral/evaluation process. From this review, goals and objectives will be generated for an individual educational plan. The Evaluation/Programming Conference members also recommend programming changes as a result of reviews of a student's progress.

During the process of programming for and placing of handicapped students, the public agency must:

1. determine at least annually the need for continued placement in special education,

2. provide special education and related services based on the student's IEP, and

3. ensure that placement is as near the student's home as possible. State and Federal laws permit the establishment of cooperative or shared programs for handicapped students. It is permissible to transport students to an appropriate program.

Curricula for handicapped students must be designed to meet individual needs and to include appropriate sections of the general curriculum. Modifications in materials, methods of instruction, and/or curriculum must be made to assist the handicapped student. District policies should be developed regarding grading and graduation requirements for handicapped students.

The handicapped student must be afforded the same opportunities as the nonhandicapped student to participate in academic and nonacademic school activities. This applies to students in any instructional setting.

A. Individual Educational Plan

An individual educational plan is designed for each student receiving special education and related services. The long-range goals of the plan are based on recommendations from the Referral and Evaluation/Programming Conferences. After the establishment of long-range goals, appropriate services, and the least restrictive environment, the service providers must develop short-term objectives which facilitate achievement of long-range goals.

The IEP must be completed prior to placement of a student in special education and related services. Fifteen (15) calendar days following parental notification of the Evaluation/Programming Conference Decision, the recommended services shall be provided, unless the parent(s)/guardian(s) objects to the placement. It is advisable to document with signatures parental participation in IEP development and/or review.

In accordance with Federal law, an individual educational plan which includes the following minimum components must be developed and implemented for each handicapped student.

(a) A statement of the child's present levels of educational performance.

(b) A statement of annual goals, including short-term instructional objectives.

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs.

(d) The projected dates for initiation of services and the anticipated duration of the services.

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

As required by federal regulations, access of every handicapped student to physical education must be guaranteed even if the physical education program must be adapted for the child. If the child needs adapted physical education, the child's individual education plan must contain a long-range goal statement to that effect. If, because of the nature and/or severity of a child's handicap, adapted physical education is determined to be inappropriate, the school district may be released from this requirement upon obtaining a physician's statement to that effect.

The same program options and nonacademic services which are available to nonhandicapped students must be available to handicapped students. As an assurance of compliance with this requirement, the Individual Education Plan must contain a description of those services which are available to the child. Program options typically include art, music, industrial arts, home economics, and vocational education. Nonacademic services and extra-curricular activities typically include athletics, health services, recreational activities, and special

interest groups or clubs.

Each public agency must provide special education and related services to a handicapped child in accordance with an individualized education plan. However, the individualized education plan is not a binding contract, and federal law does not require that any agency, teacher, or other person be held accountable if a child does not achieve the growth projected in the annual goals and objectives.

B. Annual Review of Child Progress

All special services are to be viewed as transitional arrangements, with the goal of changing services to be most appropriate in response to changing child needs. For this reason, continual monitoring and review of child progress takes place frequently to assure the most appropriate service for the child. The review shall include: (1) relevant information from all those providing instructional and/or related services, (2) an analysis of the child's performance in all academic areas, and (3) an analysis of the child's current social and/or adaptive functioning. This review is made in relation to the child's Individual Education Plan. The plan is updated in accordance with the results of the review at least annually. Review of child's progress should be made at any time upon request of appropriate professional personnel and/or the child's parents.

An annual report of each handicapped child's progress is prepared near the end of each school year, with written results submitted to the parents and to the principal for school records. One professional is designated by the principal as responsible for preparing the annual report. The child's individual education plan is updated in accordance with results of the report. Parents have the right to attend and be involved in the annual review.

If re-evaluation is required and agreed upon at the time of annual review and the sixty (60) day time line for completing the evaluation would fall during the time public schools are not in session, special agreement between parent and school may specify the date when re-evaluation could reasonably be expected to be completed. Written documentation stating the date for completion of the re-evaluation and reasons for the extension beyond sixty (60) days are required.

C. Handicapped Students Placed in or Referred to Private Schools

Under Act 102 of 1973 as amended and the State Plan for Special Education, local school districts and public agencies are permitted to place handicapped children in private schools providing special education. Public Law 94-142 has necessitated a clarification of the policies regarding private school placement:

1. When a school district or public agency in accordance with State regulations has determined that the most appropriate program for a handicapped student is available on a public school campus and the parents forego that opportunity in favor of placing the student in a private school, then the school district's financial responsibility for educating that student is also waived.

2. When a school district determines that appropriate services cannot be provided at the site of the LEA, they may choose to contract with another agency to implement the individual education plan. Parents who disagree with such a placement decision have the right to appeal.

3. The following steps must be taken with respect to the Individual Educational Plans developed for students placed in private facility:

    a. Each school district or public agency shall be responsible for the development and implementation of an IEP for each handicapped child who is placed in or referred to a private facility, is enrolled in a parochial or other private school, and receives special education and related services from that school district or public agency.

    b. Each school district or public agency shall be responsible for the initiation of meetings or conferences for the purpose of developing, reviewing, or revising the IEP.

    c. Each school district or public agency shall be responsible for providing a representative of the private school with the opportunity to attend the conference at which the IEP is developed. If this representative cannot attend, then the school district or agency must use other methods such as telephone calls, pre or post conference meetings, etc. to obtain participation. This meeting shall take place before the handicapped child is placed in the private program.

d. After the child has entered the private school or facility, any meetings to review and revise the child's IEP may be initiated or conducted by the private school or facility. If such meetings are conducted, it is the school district's or public agency's responsibility to insure that the requirements for parental participation and consent are carried out.

e. Each school district or public agency must insure IEPs are developed for all handicapped children it places in private schools.

f. The school district or public agency may require the private school or facility to further refine the IEP developed at the Evaluation/Programming Conference.

g. All of the above requirements also apply to handicapped students enrolled in private or parochial schools who receive special education from the public agency or local school district.

4. For children enrolled in private schools who were <u>not placed or referred</u> by school districts or public agencies, the following shall apply:

a. To the extent consistent with their number and location, local school districts shall make provision for the participation of handicapped children enrolled in private schools in special education and related services financed wholly or in part with Title VI-B funds.

b. The needs of private school handicapped children, the number who will participiate in Title VI-B services, and the types of special education and related services which the local school district will provide must be determined after consultation with persons knowledgeable about the needs of these children. The basis for the decision is the level of services provided handicapped children enrolled in public schools.

c. Services to private school handicapped children may be provided through such arrangements as dual enrollment, educational radio and television, and the provision of mobile educational services and equipment.

d. A local school district may provide special education and related services to private school handicapped children which are different from the special education and related services it provides to public school children, if the differences are necessary to meet the special needs of the private school handicapped children, and the special education and related services are comparable in quality, scope, and opportunity for participation to those provided to public school children with needs of equal importance.

e. Public school personnel may be made available in other than public school facilities only to the extent necessary to provide services required by the handicapped children and only when those services are not normally provided by the private school.

f. Each local school district providing services to children enrolled in private schools shall maintain continuing administrative control and direction over those services.

g. The services provided with funds under Title VI-B for eligible handicapped children enrolled in private schools may not include the payment of salaries of teachers or other employees of private schools except for services performed outside their regular hours of duty and under public supervision and control or the construction of private school facilities.

h. Equipment acquired with funds under Title VI-B may be placed on private school premises for a limited period of time, but the title to and administrative control over all equipment must be retained and exercised by a public agency.

In exercising administrative control, the public agency shall keep records of and account for the equipment, shall insure that the equipment is used solely for the purposes of the program or project, and remove the equipment from the private school premises if necessary to avoid its being used for other purposes of the program or project.

i. Programs or projects carried out in public facilities and involving joint participation by eligible handicapped children enrolled in private schools and handicapped children enrolled in public schools, may not include classes that are separated on the basis of school enrollment or the religious affiliations of the children.

j. Funds provided under Title VI-B and property derived from those funds may not be used as an advantage to any private school.

k. Provisions for serving private school handicapped children may not include the financing of the existing level of instruction in the private schools.

PART IV. INDIVIDUAL PROTECTIONS AND PROCEDURAL SAFEGUARDS

A. Prior Notice - Policy and Procedures

Prior written notice shall be given to the parents, guardians, or surrogate parents of a handicapped child or a child with a suspected handicap by the local school district. Prior notice shall be afforded to the child him/herself in the event that he/she is 18 years of age or older.

The agency shall have the option of either utilizing the content and organization of the written materials provided in this document for providing prior notice or utilizing any other written materials so long as they meet the following standards and include:

1. a full explanation of all of the procedural safeguards available to the parents under this part;

2. a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options in the agency considered and the reasons why those options were rejected;

3. a description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal;

4. a description of any other factors which are relevant to the agency's proposal or refusal;

5. language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent unless it is clearly not feasible to do so; and

6. an oral translation or a translation by other means in the event that the native language or other mode of communication of the parent is not a written language, so that the parent understands the content of the notice, and a written record reflects that this translation was provided.

Prior notice must be afforded on the following occasions:

1. referral;

2. evaluation;

3. destruction of information in accordance with the confidentiality procedures;

4. refusal by the agency to amend student records in accordance with the confidentiality procedures;

5. on any occasion when the school district proposes to initiate or change the identification, evaluation, or educational placement of the child;

6. on any occasion when the school district refuses to initiate or change the identification, evaluation, or education placement of the child.

Prior notice related to referral requires the following procedures:

1. Parents and other parties may refer their child for consideration for special education services. School personnel are assigned to assist parents in making a referral, in understanding the nature of referral, and will fill out and transmit the Referral Form to the school principal.

2. A Notification of Referral letter is sent to the parents within seven (7) days of receipt of a Referral Form by the principal. Parents are requested to attend a conference to discuss the referral. A second contact is made if the parents do not reply to the initial notification. In-person visits by school personnel are made when necessary to assist parents' understanding of the referral.

3. Parents may attend the Referral Conference, at which time they have the opportunity to discuss the learning problems experienced by the child, to present information, to review child records, and to participate in planning possible courses of action for the child. Notification of parental rights and procedural safeguards is required.

4. A Notification of Referral Conference Decision letter is sent to the parents/guardians within seven (7) days of the Referral Conference. This notification indicates the next steps to be taken for the child, reasons leading to the decision, and identifies a professional to contact for further information. Notification of parental rights and procedural safeguards will accompany the letter.

5. If the parents do not agree with the Referral Conference decision, they may request a conference with the principal and those who participated in the Referral Conference. Prior to the conference, the principal shall review all relevant data presented. This conference should provide an opportunity for the parents to present further information, review records, and understand the basis on which the Referral Conference decision was made. A written report of this conference is made and entered into the child's record. If this conference results in a decision to change steps planned for the child, a new Referral Conference Decision Form is completed.

   If the parents continue to be in disagreement with the decision made regarding the special education and/or related needs of the child, a hearing shall be conducted according to the procedures outlined in Part IV-H of this document.

Prior notice related to evaluation includes these specified procedures:

1. Evaluation procedures must be completed within sixty (60) days of the parent notification of referral conference decision. Consent for evaluation, utilizing the Informed Consent Form or a similar consent form must be obtained prior to <u>any</u> formal evaluation procedure utilization.

2. Within thirty (30) days following the completion of <u>all</u> formal evaluation activity, the Evaluation/Programming meeting should be held. Prior notification of this conference should precede the conference by fourteen (14) days. If the parents do not respond within seven (7) days, a second notice must be sent. Every effort must be made to inform the parents of the scheduled conference and its purpose. If the parents fail to respond at all, or indicate that they do not wish to participate, the conference should be held within the thirty (30) day time frame.

3. Notification, using a Parent Notification of Evaluation/ Programming Conference Decision letter, is made to the child's parents/guardian. Notification is made within seven (7) days of the Evaluation/Programming Conference. A home contact and/or home visit must be made when there is any reason to believe that the parents may require assistance in understanding the notification of the Evaluation/Programming Conference decision. All parent requests for further information should be responded to as quickly as possible.

4. Any pertinent information regarding special education services, associated medical and social services, parent organizations, and parent programs should be provided to the parents. Counseling and other assistance in interpretation of evaluative data or other matters should be made available. Parental consent must be obtained before initial placement of a handicapped child in a program providing special education and related services can be made. Except for evaluation and initial placement, consent may not be required as a condition of any benefit to the parent or child.

B. <u>Independent Evaluations - Policies and Procedures</u>

The local school district shall inform parents of a handicapped child that they have the right to obtain an independent evaluation. Parents shall be informed of this right at the evaluation conference, and it shall be transmitted in the Evaluation/Programming Conference Decision letter.

For the purposes of this section, independent evaluation means an evaluation conducted by a fully certified or licensed professional examiner who is not employed by and does not routinely provide evaluations for the state or local educational agency responsible for the education of the child in question.

This independent evaluation shall be provided at the expense of the local school district and shall be eligible for reimbursement by the State within the limits of the district's approved budget for appraisal services. A parent has the right to an independent evaluation obtained by the local school district. However, the local school district may initiate a hearing to show that its evaluation is appropriate. If the decision at the hearing is that the evaluation is appropriate, the parent still has the right to an independent evaluation but not at public expense. If the parent obtains an independent evaluation at his or her own expense,

the results of the evaluation:

1. Must be considered by the State and local educational agency in any decision

2. May be presented by either party as evidence at a hearing.

If a hearing officer requests an independent evaluation as part of a hearing, the cost of the evaluation must be at public expense. Any and all evaluations conducted at public expense (including independent evaluations) must be conducted by personnel licensed and/or certificated by the appropriate regulatory agencies and/or boards according to Arkansas law.

C. Confidentiality - Policies and Procedures

Parents are guaranteed full and free access to information which is collected and maintained regarding their children from the local and/or State agency which maintains it. In that personally indentifiable information is neither maintained by the Department of Education nor sought by the Department of Education from any other State or local agency serving the handicapped, there is no manner to assure that parent's access to a specific record is possible. If the state is required to collect personally identifiable data at some future date, these guidelines shall apply to that collection activity subject to existing state and federal law. The Department of Education and its local counterparts will not coordinate Child Find efforts with agencies failing to protect confidentiality under Section 613(b)(B) of EHA-B as amended by Public Law 94-142.

Access is guaranteed through 80-2135 Arkansas Statutes Annotated which provides that:

> "Every public school district shall make and keep current a list of all handicapped children tested and examined. The results of tests and examinations shall be confidential, except that the parent or guardian and the child age 18 and over shall have access to the results, and physicians and other specialists may be given the results with the permission of the parents or guardian, or child age 18 and over."

Hearing rights of parents, and the rights to challenge the accuracy or appropriateness of such information, is guaranteed under 80-2133 Arkansas Statutes Annotated which states:

> "Every school district shall test and examine, or cause to be tested and examined, each child it believes is handicapped. The tests and examinations shall be administered in accordance with rules and regulations of the Department of Education. All decisions pertaining to changes in the educational status of a child shall follow due process procedures established by the State. Such due process shall include providing for parental prior notification of testing and provision of special education services, right to request educational evaluation and special education services, and right to hearing and appeal of education decisions."

All local education agencies shall obtain a signed consent statement before seeking data directly from the child by formal evaluation. Section 438 of the General Education Provisions Act shall apply.

The foregoing shall be considered to the regulations adopted by the Department of Education to implement Section 19 of Act 102, as amended (Arkansas Statutes Annotated, 80-2133).

Each agency providing special educational services is required under 80-2133 Arkansas Statutes Annotated to maintain personally identifiable data in a confidential manner. This will be the responsibility of the director of each agency or his designee. It will be the responsibility of that person to:

a. assure that all data are maintained in locked storage, and

b. maintain a current listing for public inspection of those persons who legitimately have access to the data.

Each local education agency shall provide for the training of those persons using or collecting personally identifiable data as to the policies and procedures set forth in this Annual Program Plan Amendment and in Section 438 of the General Education Provisions Act. The Arkansas Department of Education will set minimum standards for this training and will provide technical assistance and consultation to local education agencies.

Destruction of Data

All personally identifiable data collected for the purposes of determining those children needing and not needing special education and related services and those children currently receiving and not receiving these services shall be destroyed within five years after the data is no longer needed to provide educational services to the child, except that a permanent record consisting of a student's name, address, and telephone number, his/her grades, attendance record, classes attended, grade level completed, and year completed may be

maintained without time limitation.

Prior to destruction of data, reasonable efforts shall be made to notify parents that they have the right to be provided with a copy of any data which has been obtained or used for the purpose previously mentioned.

Children's Rights

All rights indicated in these guidelines with regard to parents shall pass to the child upon reaching majority, except in the case of a severely or profoundly handicapped child who is legally determined to be incompetent to make such decisions for himself and for whom legal guardianship is required beyond age of majority. In those instances, the legally established guardian shall maintain the rights to privacy as outlined in this section.

Enforcement

The Arkansas Department of Education shall provide its local counterparts with copies of the policies and procedures to be followed in the confidential maintenance or personally identifiable data and in Section 438 of the General Education Provisions Act. These guidelines shall apply to all local education agencies, not just those receiving EHA-B or Public Law 89-313 funds.

Notice to Parents

Parents will be notified that information which could identify an individual child will not be collected or maintained beyond the level of the local school district and will not be made available to any state level agency, except for the purpose of overall program monitoring.

Access Rights

The rights of parents to inspect this information as stipulated in the Family Educational Rights and Privacy Act is assured according to the following policies and procedures.

Inspection

a. Requests by parents to inspect information which are made prior to a Referral or Evaluation Conference shall be honored prior to the holding of that Conference.

b. Requests by parents to inspect information shall be honored without unnecessary delay, and in no case more than forty-five calendar days after the request has been made.

c. Reasonable requests by parents for explanations and interpretations of information shall be honored with a response.

d. Requests by parents for a listing of the types and locations of data collected, maintained, or used shall be honored.

e. The authority of the parents to inspect and review data relating to his or her child may be presumed unless advised that the parent does not have the authority under Arkansas laws governing such matters as guardianship, separation, or divorce.

f. If any record includes data on more than one child, the parents of those children shall have the right to inspect and review only the data relating to their child or to be informed of that specific data.

Copies of Information

a. Parents shall have the right to request that copies of records containing data on his/her child be provided where failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the data.

b. A reasonable fee may be charged for providing copies of information requested by parents so long as the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

c. No fee shall be charged for searching and retrieving data.

Other

A record shall be kept of parties obtaining access to data collected, maintained, or used for the purpose of determining those children needing and not needing special education and related services and those children currently receiving and not receiving these services. This record shall include the name of the party, the date access was given, and the purpose for which the party was authorized to use the data. This requirement shall not apply to parents and authorized employees of the local education agency.

Amendment to Data

Due process procedures established by the State are set forth in detail in this document. The following procedures shall apply with regard to amendment of data:

a. A parent may request that appropriate amendments be made to data which he/she believes is inaccurate or misleading or violates the privacy of other rights of the child.

b. After receiving the request, a decision shall be made within a reasonable period of time as to whether to amend the data in accordance with the request.

c. Should the decision be a refusal to amend the data in accordance with the request, the parents shall be informed of this decision and advised of their right to a hearing.

d. Upon request, the opportunity for a hearing shall be provided in order to challenge the data to insure that it is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the child. The hearing shall be conducted according to following procedures:

(1) The hearing shall be held within a reasonable period of time after the local education agency has received the request, and the parent shall be given notice of the date, place, and time, reasonably in advance of the hearing.

(2) The hearing shall be conducted by the superintendent of the local education agency or his designee, neither of which shall have a direct interest in the outcome of the hearing.

(3) The parent shall be afforded a full and fair opportunity to present evidence relevant to the contested data and may be assisted or represented by individuals of his or her choice at his or her own expense including an attorney.

(4) The agency shall make its decision in writing within a resonable period of time after the conclusion of the hearing. This decision shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

(5) If, as a result of the hearing, the local education agency decides that the data is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the data accordingly and so inform the parent in writing.

(6) If, as a result of the hearing, the local education agency decides that the data is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the data and setting forth any reasons for disagreeing with the decision of the agency. Should the parent choose to place such a statement in these records, the statement shall be maintained as part of the records of the child as long as the record or contested portion thereof is disclosed by the agency to any party. When records are disclosed, the statement shall also be disclosed.

D. Consent - Policies and Procedures

Prior to disclosing any personally identifiable data to other than authorized local education agency personnel for any purpose and prior to seeking personally identifiable data from the child by formal evaluation, the local education agency shall provide the parents with information which shall describe the children on whom data will be maintained; the types of data sought; the sources from whom data will be gathered; the uses made of the data; the policies regarding storage, disclosure to third parties, retention, and destruction of all personally identifiable data; all the rights of parents and children regarding this data; and the circumstances under which their written consent is required.

Should parents refuse to sign a consent statement for formal evaluation, the agency shall have the option of either foregoing the evaluation and providing appropriate services on the basis of existing data or seeking court appointment of a special guardian under applicable Arkansas law.

The parent shall also be informed that refusal to consent to an evaluation shall not prevent the child from receiving beneficial services. This is in accord with 80-2133 of Arkansas Statutes Annotated which states:

> "...the responsibility to provide the appropriate services is not reduced by the objection of a parent or guardian to an evaluation of the child's educational needs or to the child's participation in beneficial services designed to promote the well-being of the child..."

E. Enforcement - Policies and Procedures

All applicants for EHA-B funds or Public Law 89-313 funds shall be required to sign a statement assuring compliance with these guidelines. Local education agencies shall be routinely monitored by Department personnel for compliance or noncompliance with these policies and procedures. Local education agencies found not to be in compliance will be advised of such by the Department in writing, and technical assistance and consultation will be offered in order to assure compliance.

Should the local education agency fail to comply within a reasonable period of time, the Department shall make written notification that failure to comply could result in the deferral of EHA-B or Public Law 89-313 funds until compliance is attained. Local education agencies may request a decision review of the deferral notice from the Director of the Department. The local education agency shall be notified in writing of the decision review.

The following procedures shall be followed in implementing a deferral of EHA-B funds:

(1) The Department shall examine the local education agency's approved program description and budget request for EHA-B funds for the fiscal year in which the deferral notice became effective and determine the level of activities, services, and funding.

(2) The Department shall advise the local education agency that until compliance is attained, and the deferral is lifted, official request for expansions, alterations, or redirections from the level determined in previous item will result in the total and immediate loss of EHA-B funding.

F. Nondiscriminatory Testing - Policies and Procedures

Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.

A referral for possible evaluation must be conducted before any action is contemplated that involves:

(a) the initial placement or denial of placement of a handicapped child in a special education program,

(b) the transfer or denial of transfer of a child from a special education program to full-time regular class placement,

(c) subject to paragraph (a) of this section, any change in a child's special education placement (such as changing from a self-contained special class to a resource room) must be based on:

(1) the child's current individualized education program, and

(2) any other information relating to the child's current educational performance.

G. Least Restrictive Setting - Policies and Procedures

1. To the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, shall be educated with children who are not handicapped.

2. Special classes, separate schooling, or other removal of handicapped children from the regular educational environment shall occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

3. Based upon evaluation and other information, the educational setting for a handicapped child shall be chosen from a continuum and shall be listed in each student's individual educational plan.

4. The State and local school districts shall provide or arrange for the provision of the various alternative placements as may be needed to implement handicapped students' Individual Educational Plans.

5. Unless a handicapped child's individualized education program requires some other arrangement, the child shall be educated in the school which he or she would attend if not handicapped.

6. In selecting the least restrictive setting, consideration shall be given to any potential harmful effect on the child or on the quality of services which he or she needs.

7. The Special Education Section shall take such steps as are necessary to monitor the implementation of the policies and procedures regarding least restrictive setting. If the Special Education Section finds evidence that placements are made which are inconsistent with these procedures, the following steps shall be taken:

   (a) review the local school district's justification for its actions, and

   (b) assist in planning and implementing any necessary corrective action.

H. Surrogate Parents - Policies and Procedures

1. The Arkansas Department of Education, Special Education Section, shall provide technical assistance to the local school districts regarding surrogate parent procedures and shall be responsible for monitoring the school districts' implementation of these procedures.

2. Local school districts shall insure that the rights of a child are protected when the parents of a child are not known, unavailable or when the child is a ward of the state. This shall include the assignment of a surrogate parent in accordance with the following procedures.

   (a) Location of eligible children and determination of eligibility.

   (b) Location, screening, and training of surrogate parents.

   (c) Assignment of surrogate parents.

   (d) Monitoring of surrogate parents and maintaining individual files.

3. Persons selected as surrogate parents must meet the following criteria.

   (a) May not be an employee of the public agency involved in the education or care of the child.

   (b) May not have interests which conflict with the interest of the child.

   (c) Must have knowledge and skills that insure adequate representation of the child.

4. The surrogate parent may represent the child in all matters relating to:

   (a) the identification, evaluation, and educational placement of the child; and

   (b) the provision of a free appropriate public education to the child.

The school board within each district shall be responsible for insuring that the procedures described in this section are carried out. The school board may delegate the coordination of the surrogate parent procedures to an appropriate person.

1. Location of Eligible Children and Determination of Eligibility

   a. Whenever the parents of a child who is in need of special education are unknown or unavailable the person designated as the surrogate parent coordinator shall insure that attempts are made to locate the parent at the last known address. A log of phone calls, visits, and copies of letters shall be documented as evidence of attempts to locate the parent.

   b. If phone calls and visits are fruitless or if there is no response after 20 days to a letter giving the parents full and effective notice of a proposed action by the school district, a surrogate parent must be appointed.

   c. If a child has been identified as needing special education and the child is in the custody of the state, a state agency or an institution, a person must be located for assignment as surrogate parent.

      (1) In cases where the child is in a foster home, the foster parent may be assigned as the surrogate parent.

      (2) If the foster care worker recommends it, the parent may be assigned as the surrogate parent.

      (3) If there is no foster parent and it is not recommended that the biological parent represent the child, then the school district must locate a volunteer to assign as surrogate parent.

2. Location, Screening, and Training of Surrogate Parents

   a. The school district shall be responsible for contacting community organizations, P.T.A.s, etc., to locate persons who may serve as surrogate parents.

   b. Persons who wish to serve as surrogate parents must fill out an application and meet federal and state criteria.

   c. The school district shall be responsible for assuring training of surrogate parents. This training shall include at a minimum:

      (1) the roles, rights and responsibilities of the surrogate parents, and

      (2) a review of special educational services which are required by federal and state laws.

3. Assignment of Surrogate Parents

   a. Assignment of surrogate parents shall be conducted on an individual basis. The school board may designate one or more individuals (e.g. the superintendent) to act as signatory for the board.

   b. The "assignment letter" should be mailed to the surrogate parent, as well as other appropriate persons (e.g. the principal of the school the child is attending, the foster care worker, etc.). A sample letter can be found in PART V-C.

4. Monitoring and Maintaining Files

   a. Monitoring should include keeping abreast of the child's current need for a surrogate parent vis-a-vis changes in his/her status (e.g. change of foster home, change in custody, change of school district, etc.).

   b. Monitoring should also include determing of whether the surrogate parent is meeting his/her responsibility as a surrogate parent.

   c. A surrogate parent file should include the child's referral form, the surrogate parent's application, letter of assignment, surrogate parent training certificate, etc. See PART V-C for sample forms.

5. Management System Outline

   Guidelines for a management system to implement the surrogate parent provisions of these procedures follow.

A. Appointment of a Responsible Individual: The local school district Board must designate an individual to be responsible for implementing a Surrogate Parent Program. Normally this will be the Superintendent. In turn, the Superintendent may delegate responsibility to building principals or to an individual on the administrative staff, or in some cases to an individual who serves a school cooperative. A school district Board could delegate responsibility for this activity to someone other than the superintendent, such as one of their own membership or a suitable person in the community who is not an employee of the district. The language in the procedures is designed to give school boards options for carrying out this activity.

Each school district should file Form SP-1 with the Arkansas Department of Education. SP-1 verifies that responsibility has been assigned to an individual. The School Board should review the assignment annually and require a report of activity.

B. Systematic Identification: The individual responsible for implementation of the Surrogate Parent Program must assure that children who are in need of Surrogate Parents are identified. Children in need of Surrogate Parents are those for whom no parent or legal guardian can be identified, who are not being provided physical care by a relative or some other person who can be reasonably determined to be acting in the capacity of parent to the child, or who are wards of the State.

Only those children who meet the above criteria who are also referred as potentially in need of special education must have a Surrogate Parent appointed. If it is determined that the child is not in need of special education, the services of a Surrogate Parent will no longer be required.

The largest group of children who require appointment of a Surrogate Parent are those in the custody of the State who are also handicapped. The most feasible way to assure that the school is aware of the existence of such children is to notify the County Social Services Office of the requirement and request that the school be notified when a foster child is placed in the school district. The local Social Services Case Worker should be asked whether or not they recommend appointment of the foster parent as Surrogate Parent or whether the natural parents should be contacted to fulfill the parent role. If neither is recommended, the district may select a

Surrogate Parent from other sources.

In the case of a child in the custody of Juvenile Services or Developmental Disabilities Services, these agencies will notify school districts when a child who is known or suspected to be handicapped is to be placed. They, too, will make a recommendation regarding appointment of foster parents as Surrogate Parents.

Other children will be identified by enrollment data or by failure of efforts to locate parents when a referral for special education has been made.

It should be noted that children, particularly handicapped children, are usually provided physical care by an adult. If legal custody or a family relationship cannot be established, it is advisable to appoint a Surrogate Parent. The idividual providing care may be appointed Surrogate Parent if they meet the qualifications.

For each child who is determined to need a surrogate parent, there should be, either in a separate file or as a component of another school record, Form SP-2. Form SP-2 documents that the child has been determined to be in need of a Surrogate Parent.

C. Recruitment of Surrogate Parents: To be eligible as a Surrogate Parent a person must meet the following specific criteria:

- Cannot be a present or past employee of the School District involved in education of the child.
- Cannot be an employee of a public agency involved in the education or care of the child ("public agency" includes the State Educational Agency, local educational agencies, intermediate educational units, and state agencies.)
- Must have no interest that conflicts with the interests of the child.
- Must have adequate knowledge and skills to insure adequate representation of the child.
- Be an adult 18 years old or older.
- Be able to participate intelligently in the evaluation interpretation and at the I.E.P. Conference; in short, should be able to use facts and information in making decisions regarding the provision of a free appropriate public education for the child.
- Be a person who can take time to attend meetings related to the child's evaluation, individual education program, placement, etc.

The role of the Surrogate Parent is to safeguard a handicapped child's rights throughout the special education process and to assist the school in making educational decisions regarding the child.

The rights of a Surrogate Parent are the same as the rights of a natural parent with regard to educational decisions. Specifically Surrogate Parents have the right to:

- Have access to all written records regarding the child's education.
- Authorize the child's individual evaluation.
- Receive written and verbal interpretations of the individual evaluation.
- Participate in the development of the child's individual educational program (I.E.P.).
- Authorize or refuse to authorize the completed I.E.P.
- Consent or refuse to consent to the child's special educational placement.
- Request an idependent or new evaluation, if desired.
- Initiate mediation, a due process hearing or the appeals procedure.
- Receive progress reports of the child's program.

D. Major Responsibilities of the Surrogate Parents

- To represent the child in the educational decision-making process.
- To become acquainted with the child's educational background and educational needs.

- To be available for the evaluation summary.

- To comply both with state and federal laws in the areas of confidentiality of information.

- To give input in I.E.P. development.

- To review and monitor the child's educational program.

- To conciliate and negotiate to assure compliance with special educational requirements and to assure appropriate education and services.

- To initiate and represent the child in administrative remedies, impartial hearings, and the appeal procedures if such are necessary.

In order to recruit individuals who meet the criteria of Surrogate Parents the school district may wish to contact persons in the community who are known to have an interest in handicapped children. Among the groups from which recruits may be drawn are various organizations that express a special interest in services to children -- P.T.A., Kiwanis, Junior League, Retired Senior Volunteers Program, etc. In addition, consideration may be given to parents of other children, foster parents, and others who are motivated to help children and are sensitive to the needs of handicapped children. Individuals who are members of advocate groups may be an excellent source of Surrogate Parents provided the group is not engaged in activities which would pose a conflict of interest with the responsibilities of advocating for an individual child.

We suggest that even the smallest school district have at least two or three prospective Surrogate Parents trained so that processing a child who is referred for special education will not be delayed while a Surrogate Parent is recruited and trained.

Each individual who is recruited as a prospective Surrogate Parent should complete an application, Form SP-3. This form will provide documentation that individual meets the criteria and has agreed to undergo training and to carry out the responsibilities associated with being a Surrogate Parent.

E. Training of Surrogate Parent Prospects

The purpose of providing a training program for Surrogate Parents is to assure that they understand their role and responsibilities and that they have the information needed to carry them out.

The minimum content of the Surrogate Parent training curriculum should include:

1. The Role of the Surrogate Parent
2. Responsibilities of the Surrogate Parent
3. Surrogate Parent Rights
4. Surrogate Parent Liability
5. Review of the Surrogate Parent Manual

Although there is no requirement that Surrogate Parent Training be conducted in a face to face presentation, it is strongly recommended to assure that the prospective Surrogate Parent has an opportunity to ask questions and further explore the role requirements.

The review of the Surrogate Parent Manual is considered a minimal type of exposure to the materials that inform the Surrogate Parent of rules and regulations that they need to understand in order to fully carry out their role. More instructions may be provided either before or after appontment of the Surrogate Parent.

Minimum required training is provision of an understanding of the unique aspects of the role of Surrogate Parent as compared to any parent of a handicapped child. A second purpose is to provide at least as much information as a natural parent normally has about their role in relation to special education in the public school. Surrogate Parents should have the opportunity to attend any parent training programs available to natural parents.

A Training Package is available upon request from the Arkansas Department of Education. The minimal requirements covered in the Training Package may be used as the basis for more complete training activity including elements of training designed for natural parents. Minimal Surrogate Parent Training must be provided prior to formal assignment. Use Form SP-4 to document that formal training has been provided.

F. Matching of Surrogate Parents and Children

Matching parents and children has obvious and practical purposes. For example, random assignments would overlook the possibility of assigning a foster parent to the child in their care. By consideration of certain factors, a good match between the child and Surrogate Parent improves the effectiveness of the Surrogate Parent. Those factors include:

1. Cultural similarities and primary language used by the child.
2. Geographical location relative to the school the child attended.
3. General knowledge of the characteristics of the child's handicap.
4. Preferences of the parent or child regarding age or religion.
5. Recommendations of an agency responsible for the child's care.

The matching process does not require a form. It is expected that the Parent Surrogate Application and the child's record or an interview with the child or an adult who knows the child well will provide the needed information.

Since the child will need to know the Surrogate Parent and have at least some understanding of the role, it is advisable to tell the child that someone is going to help him/her and the school "work out the subjects that they need to take," or some other simple explanation appropriate for the age and vocabulary of students.

G. Assignment

Assignment of a Surrogate Parent is the formal action taken by or on behalf of the school district Board of Education to appoint a Surrogate Parent. It consists of an assignment letter which is addressed to the Surrogate Parent. It provides the name of the child to whom the parent has been assigned and any information needed to help the Surrogate Parent begin to carry out their responsibilities. For example, the Surrogate parent will need to know the child's grade, teacher(s), school, and who to contact to become more informed about the child.

A sample letter is provided. Copies of the letter should be sent to the child's teacher and the building principal and should be in the file that is monitored by the State Department of Education Area Supervisor. The Surrogate Parent Coordinator should retain a copy for his/her own files.

H. Monitoring

Monitoring of the Surrogate Parent Program consists of receiving and evaluating information on how effectively the Surrogate Parent is serving the interests of the child. A Surrogate Parent should:

- Become familiar with the child's educational program.

- Participate in required conferences.

- Demonstrate understanding of the issues and processes for making educational decision.

- Demonstrate understanding of the role of Surrogate Parent.

No specific methodology is offered to accomplish this process, but there should be some type of documentation in an appropriate file to show that attention has been given to how well the Surrogate Parent is performing the task assigned.

I. Termination

Termination is the formal process of ending the Surrogate Parent relationship. It occurs when the child's parents are located, the child leaves the school district, graduates, quits school or the Surrogate Parent relationship needs to be ended for any reason.

Termination should be accomplished by a letter from the school district which notifies the Surrogate Parent that they will no longer serve that particular child as a Surrogate Parent. Courtesy suggests that they be informed of the reason, although that is not a specific requirement unless termination is for cause.

Terminating a Surrogate Parent for cause is unlikely, but should it be necessary the coordinator should document reasons and provide the Surrogate Parent a copy of the reasons and opportunity to appeal the decision to the Board. Failure to take these steps could result in a charge of dismissing the Surrogate Parent for reasons that relate to denial of the child's rights.

A term of a Surrogate Parent's service is not specified in regulation. However, due to the nature of the relationship it is expected that a Surrogate Parent will serve as long as they are willing and able to be effective in the role.

J. General Considerations

Surrogate Parents are volunteers who are not reimbursed for their expenses or their time. Every effort should be made to provide recognition and appreciation of their service. Care should be exercised to assure that they ae not denied opportunities to see records or to visit a classroom. The teacher or clerical employee who is responsible for areas in which Surrogate

Parents may appear need to understand their role and their rights and understand that they are not unauthorized intruders. Surrogate Parents need to know how to go about requesting access to records.

Surrogate Parents may serve more than one child. However, it is recommended that no individual be assigned more than a normal size family of school age children.

A contact person for the Surrogate Parent regarding matters that relate to issues of being a Surrogate Parent should be established. If a Surrogate Parent feels he must terminate the relationship, he needs to know who to tell, or if he has other problems, he needs a contact person. Since the Surrogate Parent Coordinator is the person who maintains a case file, that person is the most logical choice. However, if it is another person, that individual should send a brief narrative description of each contact to the coordinator's file.

I. Hearings

1. Introduction

On June 13, 1977, the State Board of Education adopted the first set of policies governing due process hearings on disagreements over educational decisions made in the interest of a handicapped child. The administrative procedures to be used by parents, local school district officials and state-appointed impartial hearing officers to implement these policies were established in the document Procedures for Impartial Hearing Officers, Special Education, May, 1978. The document was incorporated in its entirety in the document Referral, Placement, and Appeal Procedures: Special Education and Related Services (Board adopted: September, 1978). The following information represents a revision of both above-stated documents and should be utilized by all parties. The information presented focuses upon one phase of due process--the right to an impartial hearing. In order to fully understand the State's overall policies, procedures, and standards for special education, the reader should refer to:

(1) State Plan for Special Education, June, 1975;

(2) Program Standards and Eligibility Criteria for Special Education, June, 1981; and the other sections of this document, Referral, Placement, and Appeal Procedures: Special Education and Related Services, September, 1981.

These three documents provide the frame of reference for decisions made at hearings.

A. Resolution of Appeals

There are two administrative steps for resolving appeals of educational decisions made on behalf of handicapped students: the pre-hearing conference and the hearing. These two steps are interdependent and must be taken in sequence.

B. Burden of Proof

The burden of proof as to the appropriateness of any proposed or initiated placement or any proposed or initiated evaluation procedure will be upon the local school district.

C. Reasons for Appeal

Parents, guardians, or surrogate parents may request a decision review and/or a hearing for any of the following reasons:

(1) To challenge the results of an evaluation of the child;

(2) To challenge appropriateness of the child's present or recommended educational placement; and/or

(3) To challenge the appropriateness of the child's educational program.

Local school district officials may request a pre-hearing conference and/or a hearing for any of the following reasons:

(1) To challenge the need for an independent evaluation of a child at public expense and to show that the district's original evaluation is appropriate;

(2) To challenge the refusal of a parent, guardian, or surrogate parent to give consent for an evaluation of the child;

(3) To challenge the refusal of a parent, guardian, or surrogate parent to give consent for placement of the child in a special educational program; and/or

(4) To challenge the refusal of a parent, guardian, or surrogate parent to give consent for a recommended change or alteration in a child's educational placement.

2. Due Process Hearings - Step 1 - The Pre-hearing Conference

A. Introduction

The pre-hearing conference is step one (1) of the hearing process. Within seven days of the receipt of the request for the hearing, the Coordinator, Special Education Section, or his designee, must schedule the pre-hearing conference and notify all parties of the date, time and location of the conference. The Coordinator of the Special Education Section assigns a member of that agency to preside at the conference.

The purposes of the conference are to:

(1) Resolve, if possible, all disagreement thus avoiding a formal due process hearing;

(2) Narrow the range of the disagreement to a specific issue or issues;

(3) Provide an atmosphere through the introduction of a third party which is conducive to relevant discussions and mutual agreement; and

(4) Acquaint both parties with the formal hearing procedures.

The pre-hearing conference is a prerequisite to the formal hearing. The role of the Department of Education employee at the conference is that of a mediator. This individual shall not render a third party decision but may ask questions of the other two parties for the purpose of facilitating communication between themselves. The third party should review the steps which led to the request for the hearing with the parents and the school officials. These steps would include conferences with teachers, the school principal, and/or the superintendent. The third party should advise the parents and the school officials that the pre-hearing conference affords them the final opportunity to work out their differences in an informal setting. If agreement cannot be reached at the conference, the formal hearing will be scheduled and a hearing officer assigned.

B. Procedures

The following are suggested procedures when either the parents/guardian or school officials make it known that they wish to request a hearing.

(1) Hearing request is placed in writing by the requesting party. (See sample form, Request For Hearing.)

(2) LEA notifies Coordinator, Special Education Section. (See sample form, Letter To SEA.)

(3) LEA notifies parent in writing that, as previously discussed, request for hearing has been filed with SEA.

The letter will include statement of parent rights and procedural information. (See sample form, Notice of Filing A Request For Hearing and suggested enclosure.)

Within seven (7) days of receipt of the request for a hearing, the Coordinator of the Special Education section or his designee will make arrangements for step one (1) of the hearing process, the pre-hearing conference.

C. What to Expect at the Pre-Hearing Conference

The conference is an informal meeting with school officials to discuss and resolve, if possible, any disagreements regarding the child. The conference should be scheduled within seven (7) calendar days after the request has been received by the Coordinator, Special Education Section. School personnel present at the conference might include the child's guidance counselor, specialist who may have tested and evaluated the child, the district superintendent, the principal, and the child's teacher(s). The State Education Agency (SEA) representative will chair the conference.

To help the parents prepare for the conference, the school district should send them information including a written statement explaining why the child's present classification, educational program, or recommended change is appropriate. They should also send the parent a list of the alternative programs that were rejected. The special education programs available range from support services in a regular class or resource room to special self-contained classes in a special facility or approved private school.

In addition to the information mentioned above, parents must be informed before the conference that they may request to examine and copy their child's records. This includes any tests or reports upon which the present or recommended classification or placement was based.

Parents must also be informed that they may request an independent evaluation of the child other than the evaluation conducted by the local school district. This will be treated as a separate issue at the conference. If school district officials agree with the parents that the independent evaluation is needed, the evaluation must be provided at district expense. If, however, the school district officials contend that no independent evaluation is necessary, a hearing to resolve this specific issue must be scheduled. Effort to resolve other issues may proceed at the pre-hearing conference. When the formal hearing is convened, the first item of business will be the independent evaluation.

3. Due Process Hearings - Step 2 - The Formal Hearing

When agreement cannot be reached at the pre-hearing conference, a formal hearing is scheduled by the Coordinator, Special Education Section, or his designee.

A. Parent Responsibilities

(1) Assist in completion of the Hearing Information form. (See sample form.)

(2) Continue sending child to then current placement unless other arrangements are agreed to by both school and parent. From the time the hearing is requested until such time as the complaint is resolved, the child must remain in his/her present educational placement unless the school district and the parents agree otherwise. If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until such time as the complaint is resolved.

(3) Continue to send the child to school in compliance with the compulsory attendance laws.

B. Local School District Responsibilities

(1) Complete Hearing Information form. (See sample form.)

(2) Provide access to all records, reports, and files regarding the child to the parents and their representative.

(3) Provide the parents with the opportunity to inspect and copy these records at a reasonable cost.

(4) Make the arrangements for an independent evaluation for the child by an outside evaluator when deemed necessary by agreement with the parents or by order of the hearing officer.

(5) Provide appropriate school personnel to give testimony at the hearing as determined by the school district and requested by the parents.

(6) Assure parents that no change will be made in the child's educational status until completion of all proceedings, including any appeals.

(7) Provide meeting room for the due process hearing.

(8) Provide evidence and testimony at the hearing to show that evaluation or placement change is necessary.

If the hearing officer finds that the child is represented by a surrogate parent, information concerning the surrogate parent shall be introduced into the record following the opening remarks. The school district will supply information concerning the assignment and appointment of the child's particular surrogate parent. It shall not be the responsibility of the hearing officer to determine the fitness of a surrogate parent during the hearing. See Section IV-H of this document for policies and procedures relative to the appointment of surrogate parents.

C. State Education Agency Responsibilities

It shall be the responsibility of the State Department of Education to:

(1) Arrange date, time, and location of the hearing and assign a hearing officer to conduct the hearing.

(2) Provide upon request interpreters for the deaf or interpreters fluent in primary language spoken in the child's home.

D. The Due Process Hearing Proceedings

(1) Setting

The hearing shall provide both parties with the opportunity to be heard, to present their evidence and testimony, to cross examine witnesses, and to discuss the evidence presented. The hearing officer's responsibility is to maintain a professional atmosphere and to insure that the proceedings are not abused so that each party may present his evidence and testimony in a fair and impartial manner. The hearing officer should not fraternize with either party prior to the hearing. Situations may occur in which a party wishes to approach the hearing officer to say something privately. This is not permissable and the hearing officer may need to

explain that all facts are to be heard by both parties and will be accepted impartially. Normally, the hearing should be held in a school, in a comfortable room, such as a board room. The hearing officer should provide for reasonable recesses in lengthy hearings.

(2) Confidentiality

To ensure the confidentiality of a closed hearing, the hearing officer shall inquire if there is anyone present with whom the parent is not familiar. Should the parent indicate in the affirmative, the party in question will come forward, identify himself/herself, and state the reason for his/her presence. Should there be objection on the part of the parents as to the relevance of this person's continued attendance at the hearing, the hearing officer will have the responsibility to rule on the individual's presence.

(3) Preliminary Procedures

Both parties will be assured that opportunity will be given to fully present their position including documentary evidence and testimony that is reasonable. If a parent is representing himself, additional time is to be taken to indicate how witnesses, exhibits, and objections will be handled.

Inquiry of both parties will be made to determine whether there are preliminary problems, objections, or questions. These may relate to the appropriateness of the individual serving as the hearing officer, the accommodations, the notice, the failure of the school district to provide sufficient information, the lack of witnesses, etc.

All hearings are presumed to be closed unless the parent has, prior to the hearing, presented a waiver for an open hearing.

(4) Opening Statements by the Hearing Officer

Opening statements will include:

a. self introduction - statement of impartiality
b. function, role, authority
c. confidentiality
d. reason for hearing - from form
e. citing of parent requests

Example of opening statements will be provided by the Special Education Section if requested.

(5) Opening Statements and Testimony on Behalf of the Parties

a. Both parties will enter their appearances by stating their name, whom they represent, and their address. Only one person shall make an opening statement on behalf of a party.

b. School district opening statement will be a short summary of the proposed change in educational status, etc., and the reasons therefore.

c. Parent opening statement will be a short statement concerning the position of the parents and the reasons therefore.

d. Presentation of school district's case will include presentation of the notification and proposed change in educational status with documentary evidence or testimony supporting the same.

e. Presentation of parents' case will include presentation of documentary evidence and testimony in opposition to the proposed change in educational status and/or in support of alternative educational opportunites.

f. School district rebuttal will be a presentation of rebuttal evidence that concerns only points brought up by the parents in their presentation.

g. Presentation by either party of any other documentary evidence or testimony which will prove helpful in making a determination will be made.

h. School district closing statement will include a short statement concerning proposed change in educational status and supporting evidence.

i. Parental closing statement will include a short statement concerning opposition to proposed placement and supporting evidence.

Decision will be rendered within fourteen (14) calendar days after the receipt of the written transcript except that the total number of days between receipt of hearing request and hearing decision shall not exceed forty-five (45) calendar days. Parents have a right to appeal such decision to the appropriate court of law.

(6) Sample Questions for the Record (Asked of LEA)

| | YES | NO |
|---|---|---|
| a. If records, reports, and files were requested, were they made available? | ____ | ____ |
| b. Are copies available for the record? | ____ | ____ |
| c. Are all appropriate personnel in attendance? | ____ | ____ |
| d. Were parents informed in writing that they have the following rights: | | |
| - to bring counsel, friends, or expert witness? | ____ | ____ |
| - to examine all school records upon which school made its placement decision? | ____ | ____ |
| - to request that certain school personnel be present at the hearing and of their right to examine the school's witnesses? | ____ | ____ |
| - to choose if they want an open or closed hearing? | ____ | ____ |
| - to present findings from an independently conducted evaluation? | ____ | ____ |
| e. Were parents informed about when they will be notified of the hearing decision and about the subsequent recourse available to them? | ____ | ____ |
| f. Were parents advised orally and in writing that they have the right to appeal the decision of the hearing officer(s) and of the procedures that are to be used? | ____ | ____ |
| g. Were parents informed orally and in writing of their right to a formal hearing if they contest the school's recommendations? | ____ | ____ |
| h. Were parents informed in writing of the role of the hearing officer(s) including | | |
| - the responsibility to hear both sides? | ____ | ____ |
| - to limit the evidence that is presented at the hearing? | ____ | ____ |
| - the responsibility of making a decision in keeping with the child's best interests? | ____ | ____ |
| - the responsibility to engage in fact finding? | ____ | ____ |

(7) Sample Questions for the Record (Asked of Parent)

| | | |
|---|---|---|
| a. Have you requested any records, reports, and files regarding your child? If so, were they provided to you? | ____ | ____ |
| b. Have copies been made available at a reasonable cost? | ____ | ____ |
| c. Did you desire an independent educational evaluation of your child? | ____ | ____ |
| d. Have you been successful in compelling the attendance of LEA and or SEA personnel which you feel have relevant testimony or evidence? | ____ | ____ |
| e. Have you been assured by the school that (child's name) educational status would not change until all proceedings are completed? | ____ | ____ |

(8) Cross-Examination

Following direct examination, each school district witnesses shall be subject to cross-examination. Cross-examination should be concerned with the evidence presented in direct testimony. However, since the paramount interest of the child is the major intent of the hearing, cross-examination may explore areas not given under direct testimony. The hearing officer shall reserve the right to limit questions that appear not to be germane to the issue at hand.

Following the school district's case, the parents shall then be given an opportunity to present evidence and testimony that shall follow the same procedures as that utilized in the case of the school district. All introduced evidence shall be labeled. After direct examination, the school district shall have an opportunity for cross-examination.

If it appears to the hearing officer that sufficient clarity was not obtained concerning the presented issue either during the presentation of a specific witness for the school district or for the parents, the hearing officer shall have the right to pursue examination of the witnesses.

In addition, following direct testimony and cross-examination, the school district and/or the parents shall have the right to recross and redirect examination. However, this practice should be curtailed by the hearing officer whenever deemed necessary.

(9) Additional Evaluations

When a hearing officer believes that there is not enough evaluation data to make a decision, he may order further evaluation. The hearing would be postponed and reconvened when the information becomes available.

The testimony of a medical doctor on the condition of a child is appropriate for the child's medical condition only. It is not binding as to whether the child can profit from a particular educational program.

When the hearing officer observes the child to gather more information on which to base a decision, a representative from each party should be give the opportunity to be in the room. Following the observation, the hearing officer should make a statement regarding that observation and place it on record. Both parties should be given a chance to respond for the record.

Students over eighteen years of age and their representatives have the right to attend the hearing. If the child has not reached the age of eighteen, the parents can determine whether he/she should attend the hearing, except upon a finding by the hearing officer that attendance by the child would be harmful to his/her welfare. In that case the child may be excluded from portions of or the entirety of the hearing.

(10) Necessary Witnesses

The hearing officer does not have the authority to determine what members of the LEA shall attend the hearing, other than those persons whom the parent/guardian has requested. The LEA has the option in deciding who may represent them at the hearing. The burden of proof as to the appropriateness of any proposed program placement, and as to why another placement could not adequately and appropriately serve the child's educational needs, and as to the adequacy and appropriateness of any evaluation procedure will be upon the LEA. The LEA can support its proposed placement by introducing into evidence the evaluation conference report recommending the change in educational assignment. This would include the evaluator's recommendations and other reports as deemed necessary. If the child's parents wish to challenge the assignment, they must then introduce evidence to support the contention that the assignment is improper.

The parent does not have to <u>prove</u> that the LEA program assignment or request for evaluation is inappropriate. The parent has three options:

a. To give evidence of why the LEA request for evaluation is inappropriate.

b. To give evidence of why the LEA program recommendation is inappropriate.

c. To provide evidence on what is felt to be appropriate.

(11) Trial Placement

The hearing officer may decide on a trial placement for a specified period of time if it is supported with evidence in the record from the due process hearing. The hearing officer may rule that the hearing be reconvened at the end of the trial period if either of the parties are not satisfied with it. The hearing officer may also require that an evaluation be completed at the end of the trial period.

The decision of the hearing officer may require a change in the placement of the child from his present program. The hearing officer has the authority to delay the change until a more appropriate time. This delay may be necessary, in some cases, to serve the best interests of the child.

(12) Evidence

In some situations, a report may be prepared by a professional person not employed by the LEA and submitted as evidence without that professional being present. The party who submits this evidence will be asked to stipulate on the record that the report was prepared by the person who signed it and name the person's place of employment.

Any person has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) days before the hearing.

Reports submitted by the parent not based on empirical data, but simply statements of the child's behavior can be accepted as evidence. Evidence given by parents, nonprofessionals, and others associated with the child, should be given the same consideration as professionals. The hearing officer shall weigh the credibility of this and all other testimony. Copies of all written reports used as evidence must be submitted to the hearing officer and will become a part of the record.

Although the hearing officer after obtaining all of the facts may believe both parties have a good case, the school district carries the burden of proof. A decision must be made on the basis of the information presented. However, if, the hearing officer believes that because of unusual circumstances, he does not have all of the facts or believes the actual hearing to be biased because of unusual circumstances, he may ask that the hearing be recessed and reconvened when sufficient facts are available.

Any document to be placed in evidence should be marked by the court reporter or by the hearing officer if there is no court reporter. Markings are as follows:

"School District Exhibit 1; (date) (initials)" or

"Parent Exhibit A; (date) (initials)"

Parties not introducing the exhibit may have opportunity to review it and ask whatever questions of the witness being used to introduce it. Such questions should pertain only to the document itself and its admissibility. Objections may be offered as to its admissibility, after which the hearing officer should state whether the document is received in evidence or rejected and why.

(13) Background and Qualifications of Witnesses

In certain instances the party or their representatives may wish to investigate a witness' background to obtain information regarding credentials, qualifications and training. The hearing officer will need to determine whether or not the background information is necessary to be included in testimony. In most cases, the determination that the teacher or support person is fully or temporarily certified to serve in his/her position by the State of Arkansas and that the person has had some number of years of experience is sufficent. The hearing officer will need to keep the focus on the appropriateness of activities for the child and may curtail interrogation which is not designed toward that goal.

(14) Transcript of the Hearing

A written transcript of the hearing will be made. The cost of the transcript will be borne by the State Department of Education. All parties who request and receive a recording are required to protect the confidentiality of the persons mentioned in the recording, unless the parents wish that the record be made public, or if the hearing was an open hearing.

(15) Non-Appearance

In the event that one of the parties is not present at the hearing, and as long as notification procedures have been adhered to, the hearing may proceed. Testimony should be entered into the record that the absent party had ample notification of the hearing. The hearing officer should then make the decision, based upon the evidence presented, but may decide to reconvene the hearing if necessary.

(16) Request for Postponement at the Hearing

If one of the parties request that the hearing be postponed, it is the hearing officer's responsibility to determine whether that request is valid. If the hearing officer believes the request is justified, the hearing may continue at a later date, or may he heard in two time segments. The hearing officer shall determine an appropriate amount of time for preparation and stipulate the date when the hearing will reconvene for each party.

(17) Close of the Hearing

After all of the information has been heard, the hearing officer should close the hearing with a general statement without giving an indication as to the final disposition of the case.

(18) Invalid Hearing

If during the opening remarks it is determined that a hearing has been called for other than the appropriate reasons, the hearing officer has the authority to adjourn the hearing. It shall be the hearing officer's responsibility within five days following the adjournment to inform the Department of Education as to the reason for the adjournment indicating that the nature of the hearing was beyond his scope of authority, responsibility and duties.

In addition, if during the course of the hearing such invalidation comes into evidence, the hearing officer has the authority to immediately adjourn and inform the Department of Education during the five-day period. However, all hearing officers are urged to be very sparing in their application of this type of ruling.

(19) After the Hearing, the Hearing Officer observes the following procedures:

a. Checks the addresses of the parent and the superintendent as to where the decision should be sent.

b. Has copies of all exhibits retained.

c. Assures that the court reporter will provide a copy of the record.

d. Refrains from discussing matters further.

e. Considers only evidence presented at the time of the hearing unless both parties are advised and give their consent.

f. Writes the Decision stating determination, the position of both parties, findings of fact and conclusions of law which serve as the basis for decision. Reference will be made to various exhibits and testimony. The decision will be written within fourteen (14) calendar days of receipt of the transcript except that the total number of days between receipt of request for hearing and the decision shall not exceed forty-five (45) calendar days.

g. Presents copies of the decision to both parties via certified mail, return receipt requested.

h. Gives State Department of Education all original exhibits and a copy of the record.

4. The Hearing Officer

A. Definition

The term hearing officer shall mean the appointment of an impartial, trained, individual by the Department of Education, Special Education Section, for the purpose of presiding at due process hearings.

B. Disqualification - Impartiality

It shall be the responsibility of the Department of Education to ensure that the hearing officer assigned to a particular hearing is unbiased either for or against either party to the action. The school district, the parents, and their respective counsels may challenge the assignment of a particular hearing officer. Such challenge must be accompanied by written evidence and testimony to support the conclusion that the hearing officer is biased. Where such facts are substantiated it shall be the responsibility of the Department of Education to assign a new hearing officer to the case. A challenge must occur within seven (7) calendar days after notification to the parents and school district of the assigned hearing officer.

C. Role of the Hearing Officer in the Hearing

The hearing officer may question any witness in order to assist in the determination of the matter, and should do so when the hearing officer feels it is necessary in order to obtain all relevant information. It is recommended that this be done at the end of all interrogation of a specific witness. When parents are representing themselves, minimal assistance can be given but should not place the hearing officer in a position of arguing the case of the parents. Arguments and evidence should be relevant to the case.

D. Authority

The hearing officer's authority is provided for in Section 19 of Act 102 of 1973 as amended and under Part B of the Education of the Handicapped Act, Public Law 93-380 and Public Law 94-142. The hearing officer is assigned to preside at a due process hearing and shall assure that proper procedures are followed.

E. Expenses of Hearing Officer

The expenses incurred by the hearing officer shall be paid by the Department of Education according to the rates established in the contract with the hearing officer.

F. Duties and Responsibilities

The hearing officer's primary duty is to determine whether the school district's need for evaluation and/or the plan of education and training and/or the educational placement of a handicapped child is appropriate to the child's learning capabilities. Where the evaluation, the proposed plan of education and training and intended placement is not justified, the hearing officer, shall, if possibile, determine the appropriateness of evaluation, education and training. The hearing officer's decision shall be supported solely on the evidence presented at the hearing. The hearing officer shall determine whether there is substantial evidence to support:

(1) The need for an evaluation, the appropriateness of the plan of education, and training and/or the intended educational placement.

(2) Whether evidence presented by the parents warrants a need for evaluation, invalidates the proposed plan of education and training, and/or the intended educational placement as presented by the school district.

Where sufficient evidence is not present to justify the school district's proposed course of action, the hearing officer will determine, based on the record, an alternative evaluation, appropriate plan of education and training and/or educational placement consistent with the child's capabilities.

If the school district's proposed evaluation, plan of education and training, and intended educational placement is approved, the hearing officer's opinion shall refer to the evidence in the record that supports the determination that the requirements are met. The hearing officer, when offering a proposed evaluation, educational assignment, and/or educational placement, shall recommend the type "education, educational assignment, plan of educational training, and proposed educational placement". Once the proper type of evaluation, proper plan of educational and training, and/or educational assignment is determined, the school district shall implement the hearing officer's decision.

It shall be the primary responsibility of the hearing officer to insure that a full and impartial due process hearing is held so that to the broadest extent possible, evidence is presented concerning need for evaluation, an appropriate plan of education and training, and/or a proper educational environment. It shall be the hearing officer's responsibility to insure that as a result of this hearing, a decision is rendered that will provide for an appropriate evaluation, an appropriate plan of education and training, and/or proper educational assignment.

The hearing officer shall insure that the confidentiality of the due process hearing is maintained and that the hearing is conducted in an orderly manner. Upon initiation of the hearing, the hearing officer will have four responsibilites:

(1) To determine whether there is a need for an evaluation.
(Not appropriate when the issue to be heard relates to evaluation.)

(2) To determine whether there is need for change in educational assignment.

(3) To determine whether the proposed plan of education and training is appropriate to the child's learning capabilities.

(4) To determine whether the proposed plan of education and training can be implemented to the fullest extent possible in the proposed educational placement.

5. Decision of the Hearing Officer

The hearing officer's decision shall be issued within fourteen (14) calendar days after the receipt of the transcript of the hearing, except that the total number of days between receipt of the request for hearing and the decision may not exceed forty-five (45) calendar days.

(1) Such decision will be in writing and will be sent by certified mail to the parents and to the superintendent of the LEA.

(2) The decision of the hearing officer shall include findings of fact, conclusions, and reasons for these findings and conclusions. If the decision is to disapprove a proposed education program, it shall include a statement about what will be an adequate and appropriate educational program for the child in accordance with standards approved by the State Board of Education. If the decision is to approve a proposed educational program, it shall include a finding that a less restrictive program could not adequately and appropriately serve the child's educational needs.

(3) The decision of the hearing officer will be based solely on evidence and testimony presented at the hearing.

(4) Upon request of the parents or the LEA, a transcript of the hearing will be provided.

6. The Written Hearing Decision

The decision of the due process hearing shall be in written form and copies shall be sent by certified mail, return receipt requested, within fourteen (14) calendar days after the date of the receipt of the transcript except that the total number of days between receipt of the request for hearing and the hearing decision may not exceed forty-five (45) calendar days.

Copies will be distributed as follows:

(1) One copy to the parents.

(2) One copy to the superintendent of schools of the LEA.

(3) One copy for the hearing officer.

(4) One copy to Coordinator, Special Education Section, State Department of Education.

Return receipts from the copies mailed to the parent and the LEA superintendent must be forwarded to the State Department of Education.

7. Appeals

Appeals of the decision of the hearing officer may be initiated by a parent or by the local school district. Such appeal will be made to the appropriate court of law.

ACTIVITIES AND TIMELINES
DUE PROCESS HEARINGS

| | Outcome | Person(s) Responsible | Action to Take | Time Frame |
|---|---|---|---|---|
| 1. | Request for a hearing | LEA Administrator | Notify the Coordinator, Special Education Section, Arkansas Department of Education | Immediately |
| 2. | Pre-hearing conference is scheduled | Coordinator, Special Education Section, or designee | Arrange date, time, and location with parents and the local school district superintendent. Notify all parties by certified mail.<br><br>Assign supervisor to conduct pre-hearing conference. Clear possible dates with hearing officer in case mediation fails to bring about agreement. | Seven (7) calendar days |
| 3. | Pre-hearing conference | Supervisor, Special Education Section | Attempt to resolve the complaint. If agreement is reached, the conference is adjourned and the supervisor submits a report to the Coordinator. If no agreement is reached, the date, time, and location of the hearing is scheduled and the supervisor submits a report to the Coordinator. | |
| 4. | Preparation for the hearing | Coordinator, Special Education Section, or designee | Notify parents and local school district superintendent via certified mail of date, time, and location of hearing, including a summary of all rights and procedures.<br><br>Compile a list of persons whose attendance at the hearing is requested by both the parents and the district. Notify all persons on the list that their attendance is requested and provide the date, time, location of the hearing. (Sample list in appendix.)<br><br>Arrange for a court stenographer. | Fourteen (14) calendar days |
| 5. | Due process hearing | Hearing officer | Attend and conduct the hearing in accordance with the manual "Procedures for Impartial Hearing Officers". | |





(continued next page)

ACTIVITIES AND TIMELINES
DUE PROCESS HEARINGS

| | Outcome | Person(s) Responsible | Action to Take | Time Frame |
|---|---|---|---|---|
| 6. | Hearing officer's report | Hearing officer | Prepare the report of the hearing and the decision and submit it to the Coordinator, Special Education Section, to be typed. Sign the typed report. (Sample report form in appendix.) | Fourteen (14) calendar days after receipt of the transcript, with the exception that the decision must be rendered within the time frame of forty-five (45) calendar days from the receipt of the request for a hearing. |
| | | Coordinator, Special Education Section or designee | Transmit the Hearing Officer's Report to the appropriate persons via certified mail. | |
| 7. | Payment for Services | Coordinator, Special Education Section or designee | Arrange for payment to the hearing officer for his/her services according to established rates. | According to State payment timelines |
| | | | Arrange for payment to the court stenographer. | |
| | | | TOTAL DAYS | Forty-five (45) calendar days |

PART V.

FORMS

A. SAMPLE FORMS FOR LOCATION, IDENTIFICATION, EVALUATION

REFERRAL FORM SAMPLE FORM A

Student: _____

Birthdate: _____ CA: _____

Name of person referring child: _____

Name and address of Parent or Guardian: _____

_____

Description of academic and/or behavioral performance which prompted referral:

_____

_____

_____

What strategies/methods have been used to improve academic and/or behavioral performance? _____

_____

_____

What are the child's strengths? _____

_____

_____

_____

Date and results of hearing screening: _____

_____

Date and results of vision screening: _____

_____

Additional information from school records and/or comments: _____

_____

_____

_____

_____

_____

_____ _____

(Referring person/agency) (Date)

SAMPLE FORM B

PARENT NOTIFICATION OF REFERRAL/REFERRAL CONFERENCE

Date: _____

Dear _____:

Your child, _____, has been referred for consideration to receive special services. Such services would provide additional educational assistance.

We have scheduled a Referral Conference on _____ (Date), at _____ (Time) in _____ (Location). The purpose of the conference is to discuss _____ (Child's name) needs. It will also provide an opportunity for you to learn more about these special services. If the time, date, or location of the conference is inconvenient for you, please contact us. We will reschedule it at your convenience.

Please complete the enclosed form and return it within seven (7) days. We are required to hold this conference within a specified time period. If you have any questions or concerns, please call _____ (Designated person) at _____ (Phone).

We are looking forward to hearing from you.

Sincerely,

_____
(Principal)

_____
(School)

Enclosure

SAMPLE FROM B-1

PARENT NOTIFICATION OF REFERRAL -- ENCLOSURE

Referral Conference scheduled for _____
(child's name)

_____ I will attend the Referral Conference as scheduled.

_____ I cannot attend the Referral Conference as scheduled.

_____ Please reschedule on _____ / _____ / _____
(date) (time) (location)

_____ Please contact me by phone at _____ to reschedule the conference.

_____ I choose not to attend the Referral Conference.

Parent/Guardian: _____
(signature)

_____
(date)

RETURN TO: _____
(school official)

_____

_____
(address)

## SUMMARY OF PARENT'S RIGHTS AND RESPONSIBILITIES

Public Law 94-142 is a federal law which provides a free and appropriate public education to all handicapped children. This law requires the school to provide parents with every opportunity to become involved in their child's educational program and to document that involvement. These rights place responsibility on parents to become actively involved in the education of their child.

Parents should become involved for the following reasons.

1. Parents need to know the nature and extent of the educational problems of their child.
2. Parental support is beneficial to the child.
3. Parents need to be informed of their child's progress.
4. Parents can provide practice on skills and give feedback to the school.
5. Combined information from home and school provides a better understanding of how the student learns.

To ensure that this involvement occurs, several rights to which parents are entitled were included in Public Law 94-142, the Education for All Handicapped Children Act. These rights are referred to as "procedural safeguards". The following is a summary of specific areas addressed in these "procedural safeguards".

1. Notice - Parents must receive written notice before their child is identified, evaluated or placed in any specialized educational program. Written notice is also required before any change in program.
2. Consent - Parental consent must be obtained before conducting a pre-placement evaluation and before initial placement of a handicapped child in a program providing special education and related services.
3. Evaluation - Parents have a right to a full evaluation of their child's individual educational needs. Parents may obtain evaluations independent of the school.
4. Records - Parents have a right to know what records are kept on their child and the right to see them.
5. Confidentiality of Information - With the exception of certain individuals, (school officials, for example, and teachers with legitimate educational interests), no one may see a child's records unless parents give their written permission.
6. Least Restrictive Environment - Parents have a right to have their child educated with non-handicapped children to the maximum extent appropriate.
7. Hearings - If at any point during identification, evaluation, or placement, parents do not agree with the educational decisions made concerning their child, they have the right to request a hearing. The right to appeal the findings and decisions of the hearing is also assured.

## YOUR RIGHTS AS THE PARENT OF A HANDICAPPED CHILD

The following information is a detailed statement of parental rights. The citations at the left side of the page refer to the specific section of the Federal Regulations. In the interest of simplicity, they have been paraphrased here.

### "NOTICE"

As a parent you have a right to:

121a.504(a)(1)(2) ... be notified before the school identifies, assesses, or places your child on grounds of having a handicapping condition; or changes an identification, assessment, or placement that has been made; or rejects your request that these actions be taken.

121a.506(b)(1)(2) ... receive all such notices in writing and in the language you speak and understand best. If there are parents whose native language is not a written language, the school officials must see that the notice is explained to them orally or in a mode of communication they understand, that they understand the information they have been given, and that there is written evidence that this requirement has been met.

121a.505(c)(1)(2)(3)

121a.505(a)(3) ... be notified of each testing procedure, record, or report the school will use as the basis for any decision regarding your child.

121a.505(a)(2) ... a description of the plan for your child with an explanation of why it is recommended, what other options were considered, and why those options were ruled out.

121a.505(a)(4) ... be informed of any other relevant factors that school officials considered in their decision.

The notice you receive must also include all of the information contained in this booklet.

### "CONSENT"

Your written consent is necessary before the school may:

121a.500(a)
121a.504(b)(1)(i) ... test your child individually with any tests that are not generally given to most other students.

121a.504(b)(1)(ii) ... place your child in a special education program for the first time.

121a.500(a) Before your consent is given, the school must explain in your native language what you are agreeing to, and the school must be sure that you understand it. The consent form must describe what you are

121a.500(b) agreeing to, list which of your child's records (if any) will be released, and specify who will receive them.

121a.500(c) Your consent is to be given freely, and you may withdraw it at any time.

121a.504(b)(2) If you do not give your consent, your child's basic right to attend school and participate in school activities will not be affected by your refusal.

121a.504(c)(1) If you refuse to give your consent, and the school administrators believe what they propose is in your child's best interest, the school may request a hearing. An independent hearing officer would
121a.504(c)(2)(i) then decide whether your child should be tested or placed without your consent. You have a right to attend this hearing and tell why you refuse to give your consent. You also have a right to appeal the
121a.504(c)(2)(ii) decision to the State if the procedure was a local hearing.

## "EVALUATION AND PLACEMENT PROCEDURES"

121a.531 Before your child receives any special education services, a full and individual evaluation must be conducted. This means your child will be given specific tests which are not usually given to most school children.

In this circumstance your child has a right to:

121a.532(a)(1) ... be tested in the language which he or she speaks and understands best,

121a.530(b) ... be tested in such a manner that results are not affected by race or culture,

121a.532(a)(2)(3) ... be tested by qualified professionals using valid tests which are given according to proper instructions,

121a.532(e) ... be evaluated by a group of professionals including at least one teacher or specialist who is knowledgeable about the kind of problem your child is thought to have,

121a.532(f) ... be tested in all areas related to his or her suspected problem,

121a.532(b) ... be tested through procedures which determine specific areas of educational need, not just an intelligence ("IQ") test,

121a.532(d) ... have his or her educational program determined on the basis of more than one test,

121a.534(b) ... receive a complete re-evaluation every three years, or more frequently if necessary or if requested by you or your child's teacher,

121a.534(a) ... have his or her individualized education program (IEP) reviewed annually.

121a.532(c) Tests must be given to children with impaired hearing or vision, or restricted ability to move or speak, in such a way as to measure the child's potential ability or what the child has learned and not the degree of impairment (unless, or course, measuring impairment is the purpose of the test).

When looking at test results and deciding on the best program for your child, the school must:

121a.533(a)(1) ... collect information from many sources,

121a.533(a)(2) ... guarantee that this information is documented and carefully considered,

121a.533(a)(3) ... insure that the placement decision is made by a group of professionals including some who know about your child and are professionally capable of interpreting the test results and relating those results to appropriate options,

121a.533(a)(4) ... insure that the placement decision is made in such a way that your child's education will be to the extent appropriate, with children who are not handicapped.

121a.533(b) If it is determined that your child is handicapped and is in need of special education and related services, an IEP must be developed.*

*An IEP is an individualized educational program which must include a statement of your child's present levels of educational performance, a statement of annual goals and short term objectives for your child, a statement of the specific special education and related services to be provided, the extent to which your child will be able to participate in regular education programs, and the projected dates for beginning the special education and how long it is expected to continue. It must also include an objective way of determining, at least annually, whether your child is achieving the short term objectives that were set. This IEP must be decided upon in a meeting which includes a representative of the school your child attends (this must be someone who is qualified to provide or supervise special education,) your child's teacher, you as the child's parent or parents, and your child if that is appropriate. Either you or the school may have others participate. If you wish additional information about your child's IEP you should ask your child's teacher or an official of your child's school.

## "INDEPENDENT EDUCATION EVALUATION"

121a.503(a)(b) If you do not agree with the evaluation provided by the school -- that is, if you don't think they gave the right tests or reached the right conclusions -- you may have an independent educational evaluation conducted at public expense. An "independent educational evaluation" means that your child will be tested by a qualified person who is not employed by the school your child attends. The school will either pay for a private evaluation or will arrange for one at no cost to you. However, the school also has a right to a hearing, to show that its evaluation was appropriate. If the hearing officer decides that the school's evaluation was appropriate, you still have the right to an independent educational evaluation, but not at public expense.

121a.503(a)(3)(i)

121a.503(a)(3)(ii)

121a.503(b)

121a.503(a)(2) The school must inform you, upon your request, where independent evaluations are available.

If you have an independent evaluation conducted at your own expense, the results of this evaluation:

121a.503(c)(1) ... must be considered by the school in any decision regarding your child's education, and

121a.503(c)(2) ... may be presented as evidence in a formal hearing (see page 7)

121a.503(d) If an independent evaluation is requested by a hearing officer as part of a "due process hearing," the evaluation must be at public expense.

121a.503(e) Evaluations conducted at public expense must meet the same criteria (qualifications of examiner, etc.) as those conducted by the school.

## "RECORDS"

You have a right to:

121a.565 ... receive, upon your request, a list of the types of education records kept on your child, where they are maintained, and how you can get access to them, and

121a.562(a) ... inspect and review any of your child's records.

The school must comply with your request to do so:

without unnecessary delay

before an IEP meeting or hearing

within 45 days

121a.566(b) (The school may not charge to search for or collect the information)

121a.562(b)(1) ... have someone at your child's school explain or interpret any item in your child's records

121a.562(b)(2) ... receive copies of the records if this is the only way to insure that you will be able to review and inspect them. The school may charge a fee for the copies, if such a charge does not prevent you from inspecting and reviewing the records

121a.562(b)(3) ... have a representative inspect and review the records

121a.562(c) The school may assume that you have the authority to inspect and review your child's records unless it has been informed that you do not have this right (because of some legal action such as custody, for example).

121a.567(a) If you feel that any statements in your child's records are wrong or misleading, you may ask the school to change them. The school must either change such statements in a reasonable period of time or formally refuse to do so. If it refuses, school officials must inform you of their refusal and advise you of your right to a hearing on the matter.

121a.567(b)
121a.567(c)

121a.568 — If you request such a hearing, the school must hold one.

121a.570 — This hearing does not necessarily follow the process described in the "hearings" section of this explanation of rights (to be found on page 7). The hearing may be conducted by any school official who does not have a direct interest in its outcome.

121a.569(a)
121a.569(b) — If the hearing is decided in your favor, school officials must change the information and inform you they have done so.

121a.569(c)(1)(2) — If the information is held to be accurate, you have the right to add your own statement to the record. Your statement must be kept as long as the contested part of the overall record is kept, and if that record is shown to anyone, your statement must also be shown.

## "CONFIDENTIALITY OF INFORMATION"

121a.572(a) — The school is responsible for protecting the confidentiality of your child's education records by:

121a.572(b) — ... naming the individual who is responsible for insuring the confidentiality of records,

121a.572(c) — ... guaranteeing that all persons who collect or use such information receive training in the State's policies and procedures regarding confidentiality,

121a.572(d) — ... keeping for public inspection a list of those employees who are permitted access to these records,

121a.564 — ... permitting parents to see only that information which relates to their own child when records contain information on more than one child,

121a.571(a)(1) — ... requiring your consent before your child's education records are given to anyone not involved in your child's education,

121a.571(a)(2) — ... requiring your consent before using your child's records for any purposes other than those related to providing special education and related services. However, states may have policies and

121a.571(c) — procedures which apply in the event that you decline to give this consent and that the school feels the records should be given to the person who requested them. These procedures could allow the school to send copies of the records to the requesting person or agency, under certain circumstances, despite your objection.

121a.573(a)(b) — ... informing you when confidential information on your child is no longer needed. At your request, this information must be destroyed (or changed so that it cannot be identified as belonging to your child).

121a.561(a) — States are required to have continuous procedures to identify handicapped children and to publish a statewide notice in newspapers

or other media which informs parents of the requirements regarding identification of handicapped children.

It must include:

121a.561(a)(1) ... information as to the languages in which the notice is available,

121a.561(a)(2) ... a description of the children on whom confidential information is kept and the uses of that information,

121a.561(a)(3) ... a description of how this information is kept and protected,

121a.561(a)(4) ... a description of the rights of parents and children regarding this information.

## "LEAST RESTRICTIVE ENVIRONMENT"

Your child has a right to:

121a.550(b)(1) ... be educated to the extent appropriate with children who are not handicapped,

121a.550(b)(2) ... be in a regular classroom unless the nature of severity of the handicap is such that he or she cannot receive a satisfactory education in the regular classroom, using additional aids and services,

121a.551(b)(1) ... have a range of placements available, including regular school classes, special classes, special schools or institutions, residential placements, and home instructions,

121a.553 ... participate with non-handicapped children in extra-curricular and non-academic activities,

121a.552(c) ... attend the school he or she would attend if not handicapped, unless the IEP calls for a different placement.

Your child's educational placement must be:

121a.552(a)(1) ... reviewed and decided upon at least annually,

121a.552(a)(2) ... based on the IEP,

121a.552(a)(3) ... as close to home as possible.

121a.551(a)
121a.552(b)
121a.551(b)(2) Every school must have available a variety of settings to meet the educational needs of handicapped children. This range must include any placement which is needed to implement the child's IEP. Provision must also be made for supplying any supplementary services needed when a handicapped child is in a regular class.

121a.552(d) In selecting the least restrictive environment for your child, school officials must consider any possible harmful effects that a particular placement may have on your child or on services your child is to receive.

It is the responsibility of the State Department of Education to:

121a.554 ... make arrangements with public and private institutions to insure that to the extent appropriate, handicapped children are educated with non-handicapped children,

121a.555 ... insure that teachers and administrators are fully informed about the implications of the concept of the least restrictive environment and receive training and assistance in its application,

121a.556 ... insure that all schools in the state are carrying out these requirements. If there is evidence that a school is not, the State Department of Education is obligatec to review the school's performance and to see that any shortcomings are corrected.

"HEARINGS"

121a.506(a) If at any time you cannot come to agreement with the school regarding your child's education, you have the right to ask for an impartial hearing. A hearing may be held on any matter relating to the identification, evaluation, or placement of your child or the provision of a "free appropriate public education". Hearings are to be held by either the State Department of Education or the school directly responsible for your child's education.

121a.506(b) To obtain a hearing, you should make a written request to the person who is responsible for the education program your child attends.

"HEARING OFFICERS"

An impartial hearing officer will be assigned to preside over any such hearing and arrive at a decision. To insure impartiality, a hearing officer may not be:

121a.507(a)(1) ... an employee of a public agency (school system, institution, etc.) which is involved in the education or care of your child,

121a.507(a)(2) ... anyone who has a personal or professional interest which would conflict with objectivity in the hearing.

121a.507(c) Each school must keep a list of persons who serve as hearing officers and their qualifications.

"HEARING RIGHTS"

Rights which both you and the school are entitled include the right to:

121a.508(a)(1) ... be accompanied and advised by legal counsel and by persons with special knowledge of the problems of handicapped children,

121a.508(a)(2) ... present evidence and cross examine and compel the attendance of witnesses,

121a.508(a)(3) ... prohibit the introduction of evidence that had not been revealed to you at least five (5) days before the hearing,

121a.508(a)(4) ... receive a written or recorded verbatim record of the hearing,

121a.508(a)(5) ... receive a written finding of fact and the decision of the hearing.

You also have the right to:

121a.506(c)(1)(2) ... be told by the school where free or low cost legal help is available. The school must give you this information at any time you request it or whenever a hearing is to take place,

121a.508(b)(1) ... have your child attend the hearing if you wish,

121a.508(b)(2) ... open the hearing to the public if you wish,

121a.512(d) ... have the hearing conducted at a time and place reasonably convenient to you.

121a.512(a)(1)(2) Within 45 days of receipt of your request for a hearing, the hearing officer must reach a decision and mail you a copy of the decision.

121a.512(c)
121a.509 The hearing officer may grant an extension to this time period at the request of either party. The decision of the hearing officer is final unless either you or the school chooses to appeal.

"APPEALS"

121a.510(a)(b) If your hearing was held by the State and you are not satisfied, you can bring civil action in a State court or a U.S. district court. If your hearing was held by your school rather than the State, and if you are dissatisified with the decision of the hearing officer and would like to appeal it, you must inform the State Department of Education of your desire to do so. The State Department of Education will then conduct an impartial review of the hearing. The officer conducting the review will:

121a.510(b)(1) ... examine the entire hearing record,

121a.510(b)(2) ... insure that the hearing was conducted properly,

121a.510(b)(3) ... seek more evidence if necessary, if a hearing is held to receive this additional evidence, then the hearing rights previously described would apply,

121a.510(b)(4) ... give both parties an opportunity to present arguments,

121a.510(b)(5)(6) ... make an independent decision and give both parties a copy of the decision.

121a.510(c) The decision of the impartial review must be reached and a copy of it mailed to you and the school within 30 days of the request for the review (unless an extension is granted by the reviewing official). The decision is final unless either party chooses to bring civil action and pursue the matter in court. During the time that the

hearing an appeals process is taking place, your child is to remain in his or her present placement, unless you and the school agree otherwise. If the dispute concerns the initial admission of your child to public school, then he or she, with your consent, will be placed in a public school program until the completion of the proceedings.

"SURROGATE PARENTS"

Each school must guarantee that rights of children are protected when:

121a.514(a)(1) ... no parent can be identified,

121a.514(a)(2) ... the whereabouts of the parents is not known,

121a.514(a)(3) ... the child is a ward of the State.

121a.514(b) It is the school's duty to appoint a stand-in or surrogate, or to see that one is appointed. Either the state or your school must have a method of appointing surrogates. The school or state may select a

121a.514(c)(1) surrogate in any manner permitted by State law, but must make sure that the person selected:

121a.514(c)(2)(i) ... does not have a conflict of interest,

121a.514(c)(2)(ii) ... is qualified to represent the child,

121a.514(d)(1)(2) ... is not an employee of a public agency involved in the education or care of the child (a person is not considered an employee solely because he or she serves as a surrogate).

121a.514(e) The surrogate may represent the child in all matters relating to identification, evaluation, placement, and the provision of a free appropriate public education.

SAMPLE FORM D

## REFERRAL CONFERENCE DECISION-FORM

Student: _____

Birthdate: _____ CA _____

Referral Conference Date: _____

Attendees: _____

_____

Referral Conference Decision: (Circle one)

_____ 1. Evaluation

a. Specialized

b. Comprehensive

_____ 2. No Evaluation (remain in regular education program with/without other types of program modification)

Programming Recommendations:

_____

_____

_____

_____

Reason(s) for Temporary Placement (if applicable):

_____

_____

_____

_____

Professional(s) Designated Responsible for Implementing Decision: _____

_____

Signature of Principal/Designee: _____ Date: _____

SAMPLE FORM D-1

PARENT NOTIFICATION OF REFERRAL CONFERENCE DECISION

Date: _____

Dear _____:

The possibility of special services for _____ (child's name) was discussed at a Referral Conference on _____. The following decision was reached: _____

_____.

This decision was based on: _____

_____.

If you have any questions or concerns about this decision, please contact _____. He/She has been designated responsible for seeing that the Referral Conference Decision is implemented. We would also welcome any additional information about your child that you may wish to provide.

You will find enclosed a summary of parental rights applicable to the process of identification, evaluation, and placement of students in a special education program. Please contact me if you need additional information.

Sincerely,

_____
(principal)

_____
(phone)

Enclosure

## INFORMED CONSENT

### INFORMATION FOR PARENTS OR GUARDIAN

Under regulations prescribed by State and Federal law, your consent is required before this school district can deal with confidential information on your child in any of the following ways:

1. Disclose the information to anyone other than authorized personnel employed by this district;

2. Use the information for any purpose other than those stated below; or

3. Seek it directly from your child by a comprehensive and/or specialized evaluation. (Your refusal to consent to an evaluation does not prevent your child from receiving beneficial services.)

The Arkansas Department of Education is coordinating the collection of selected information items on physically, emotionally, and mentally handicapped children birth through twenty-one years of age for the purpose of determining present and future program and placement needs, and for statistical reporting. Information is sought by survey from this school district, the Divisions of Developmental Disabilities Services, Mental Health Services, Social Services, Rehabilitation Services, and Juvenile Services of the Department of Social and Rehabilitative Services, Easter Seals of Arkansas, and Arkansas Department of Health.

Information which could identify an individual child will not be collected or maintained beyond the level of the school district and will not be made available to any State level agency, except for such purposes as overall program monitoring. As a parent, you are guaranteed the right to inspect any such information, and to obtain copies. Access by any unauthorized person to information which would identify an individual child, without the informed consent of the parent, is expressly forbidden. Parents will be informed in their primary native language or other mode of communication unless it is clearly not feasible to do so. For individuals eighteen (18) years of age, or older, the above stated rights pass to the individual.

The school district has the responsibility for the confidential maintenance of this information in locked storage and for the destruction of the information following the termination of services for the child. Parents will be notified prior to the destruction of the data.

# INFORMED CONSENT

Name of Student: _____ Date of Birth: _____

Address: _____ School: _____

Authorization is hereby granted to _____ to,
(name of district)

(Check those appropriate)

1. ☐ Conduct a comprehensive evaluation of my child which may include measures of:

   a. Intelligence: Measures of intelligence assess the student's capabilities for learning (strengths and weaknesses).

   b. Achievement: These measures assess a student's skill development in academic content areas. They measure the level of academic skill attainment or educational achievement.

   c. Language/ Communicative Abilities: These measures determine levels of functioning in regard to speech (fluency, voice, articulation), language and hearing processes. This includes abnormal comprehension and/or expression of spoken or written language.

   d. Adaptive Behavior: These measures reflect the manner in which an individual copes in independent functioning, personal responsibility, and social responsibility.

   e. Other: Measures may be needed to determine a student's specific strengths and weaknesses in a particular area.

   _____

   _____

☐ Conduct a specialized evaluation of my child.

Type of evaluation: _____

Name of Evaluator or Agency: _____

2. ☐ Release the following information to a third party:

   _____
   (describe information to be released)

   _____
   (name of third party)

   _____
   (address)

   _____
   (city, state, zip code)

   _____
   (purpose of release)

3. ☐ Use the following information for other purposes:

   _____
   (describe information)

   _____
   (purpose)

I have read and I understand "INFORMATION FOR PARENTS OR GURADIANS". I understand the purpose(s) for which my consent is being requested.

_____ _____
(signature of parent) (date)

SAMPLE FORM F

PARENT NOTIFICATION OF EVALUATION/PROGRAMMING CONFERENCE

Date: _____

Dear _____:

The evaluation of _____ has been completed.
(child's name)

We are scheduling an Evaluation/Programming Conference to discuss the evaluation information. We would like for you to serve as a conference team member to assist in making appropriate educational decisions.

We have scheduled the Evaluation/Programming Conference on _____,
(date)

at _____ in _____. If
(time) (location)

the time, date or location of this conference is not convenient for you please contact us. We will reschedule the conference at your convenience.

Please complete the enclosed form and return it within seven (7) days. We are required to hold this conference within a specified time period. If you have any questions or concerns, please contact _____.
(designated person)

We are looking forward to hearing from you.

Sincerely,

_____
(principal)

_____
(school)

Enclosure

SAMPLE FROM F-1

PARENT NOTIFICATION OF

EVALUATION/PROGRAMMING CONFERENCE -- ENCLOSURE

Evaluation/Programming Conference scheduled for _____
(child's name)

____ I will attend the Evaluation/Programming Conference as scheduled.

____ I cannot attend the Evaluation/Programming Conference as scheduled.

____ Please reschedule on _____ / _____ / _____.
(date) (time) (location)

____ Please contact me by phone at _____ to reschedule the conference.

____ I choose not to attend the Evaluation/Programming Conference.

Parent/Guardian: _____
(signature)

_____
(date)

RETURN TO: _____
(school official)

_____

_____
(address)

SAMPLE FORM G

## EVALUATION/PROGRAMMING CONFERENCE DECISION - FORM

Student: _____

Birthdate: _____ CA: _____

School: _____ District: _____

Evaluation Conference Date: _____ Location: _____

| Evaluation Data Areas: | Summary of Results: |
|---|---|
| Intellectual: | |
| Achievement: | |
| Language/ Communicative Abilities: | |
| Adaptive Behavior: | |
| Social History: | |
| Other: | |
| Other: | |

Relationship of evaluation results to primary handicapping condition: _____

_____

_____

Student eligibility for special education is certified by the establishment of this primary handicapping condition by the evaluation committee: _____

Evaluation conference committee chairperson: _____

This statement of primary handicapping condition is a requirement of Act 102 of 1973, as amended, and Public Law 94-142, if a student is to receive special education services.

This is not a statement of the student's general ability but only involves the narrow area of public education.

This statement will be used only for determination of eligibility for special education services.

This primary handicapping designation will no longer apply to this student when special service delivery is terminated.

SAMPLE FORM G

EVALUATION/PROGRAMMING CONFERENCE DECISION-FORM (CONTINUED)

Description of Educational Deficit: _____

_____

_____

_____

_____

Evaluation/Programming Conference Decision (Check One)

_____ Special services appropriate

_____ Special services not appropriate at this time.

Programming Recommendations:

_____

_____

_____

_____

_____

Placement Recommendation: _____

_____

_____

Professional(s) Designated Responsible for Implementing Decision: _____

_____

Evaluation/Programming Conference Committee Members:

| Signatures | Title | Agree | Disagree* |
|---|---|---|---|
| _____ | | _____ | _____ |
| _____ | | _____ | _____ |
| _____ | | _____ | _____ |
| _____ | | _____ | _____ |
| _____ | | _____ | _____ |
| _____ | | _____ | _____ |

*If committee member disagrees with decision, attach statement of reason for disagreement.

SAMPLE FORM H

PARENT NOTIFICATION OF EVALUATION/PROGRAMMING CONFERENCE DECISION

Date: _____

Dear _____:

The Evaluation/Programming Conference for _____ (child's name) was conducted on _____ (date). The evaluation results were reviewed and the following decision was reached: _____

_____.

_____ has been designated to be responsible for the implementation of this decision.

This decision of the committee was based on: _____

_____.

The recommended services for your child include: _____ (type of placement).

As a parent/guardian, your written consent is required before initial placement in a special education program can be made.

We believe that this decision represents the most appropriate educational services for your child at this time. If you disagree with this decision, we would be happy to discuss the matter further with you.

As a parent/guardian, you have the following rights:

1. the right to a hearing if you disagree with the conference decision;
2. the right to review the detailed information used to reach the decision; and
3. the right to obtain an independent evaluation.

Much time and effort has been spent in planning the most appropriate program for your child. Your cooperation with the school is very much appreciated.

Sincerely,

_____
(principal)

_____
(phone)

SAMPLE FORM I

INITIAL PLACEMENT CONSENT - FORM

Date: _____

I, as parent or guardian of _____,

(check one)

/__/ authorize

/__/ do not authorize

placement in the special education program at _____
(location)

in the _____. I understand that the
(type of placement)

need for this placement will be reconsidered and reviewed in terms of my child's progress at least annually.

_____
(parent or guardian's signature)

SAMPLE FORM K

ANNUAL REVIEW CONFERENCE NOTICE

Date: _____

Dear _____:

The Annual Review Conference for _____ has been scheduled
(child's name)

for _____, at _____, in _____.
(date) (time) (location)

If the date, time, or location of the conference is inconvenient for you, please contact us. We will reschedule it at your convenience.

The purpose of this conference is to fulfill the requirement to review your child's educational placement annually. Procedures that will be used include:

_____

_____

_____

_____

_____

_____

You have the right to examine all records related to the annual review. Within ten (10) days after the review is completed, you will receive a report of the findings and recommendations.

Your continued participation in the decisions regarding the appropriate educational program for your child is appreciated.

Sincerely,

_____
(principal)

_____
(phone)

SAMPLE FORM L

ANNUAL REVIEW REPORT - FORM

Student: _____ CA: _____ Date: _____

Date of Last Comprehensive Evaluation: _____

Attendees: _____

_____

_____

Progress to date based on achievement of IEP goals & objectives: _____

_____

_____

_____

_____

Programming Recommendation: _____

_____

_____

_____

_____

Placement Recommendation: _____

_____

_____

_____

_____

Chairperson of Review Team Signature: _____

Parent Signature: _____

Parent Notification if Not in Attendance (Date: _____)

B. SAMPLE FORMS FOR PROGRAMMING

SAMPLE FORM J

# INDIVIDUAL EDUCATION PLAN

CHILD'S NAME _____ BIRTH DATE _____ 19 ___ GRADE _____

SCHOOL _____ DATE _____ 19 ___ AGE _____

| STUDENT'S SCHEDULE | REGULAR (Time) | SPECIAL (Time) | MODIFICATIONS FOR REGULAR CLASSES (Refer to Strengths and Weaknesses) |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

## SIGNATURES OF PLAN DEVELOPERS

| NAME | TITLE | NAME | TITLE |
|---|---|---|---|
| 1. | | 5. | |
| 2. | | 6. | |
| 3. | | 7. | |
| 4. | | 8. | |

## PROJECTED DATES

FOR INITIATION OF SERVICES: _____

FOR DURATION OF SERVICES: _____

SAMPLE FORM J

PAGE 2 NAME: _____

DATE: _____

## STATEMENT OF PARENTAL PARTICIPATION

## SUMMARY OF PRESENT LEVEL OF FUNCTIONING

ASSESSMENT RESULTS:

STRENGTHS:

WEAKNESSES:

SAMPLE FORM J

PAGE 3 NAME: _____

DATE: _____

LONG RANGE: GOALS, ACADEMIC, *VOCATIONAL, REGULAR CLASS, OTHER (PLEASE SPECIFY):

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

INSTRUCTIONAL AREA _____ PERSON RESPONSIBLE _____

| GOAL NUMBER | SHORT TERM OBJECTIVES | MATERIALS | EVALUATION PROCEDURES | DATE BEGUN | DATE COMPLETED |
|---|---|---|---|---|---|
| 75 | | | | | 76 |

*SECONDARY EMPHASIS

SAMPLE FORM J

PAGE 3-A NAME _____

DATE _____

INSTRUCTIONAL AREA: _____ PERSON RESPONSIBLE: _____

| GOAL NUMBER | SHORT TERM OBJECTIVES | MATERIALS | EVALUATION PROCEDURES | DATE BEGUN | DATE COMPLETED |
|---|---|---|---|---|---|
| | | | | | |

77

78

SAMPLE FORM J

DATE: _____ PAGE 4 NAME: _____

INDIVIDUAL EDUCATION PLAN–FORM

LEAST RESTRICTIVE SETTING:

A. CIRCLE THE PLACEMENT (Service Setting) WHICH IS LEAST RESTRICTIVE FOR THIS CHILD BASED UPON DATA OBTAINED DURING HIS/HER EVALUATION AND UPON THE COMPONENTS OF THIS PLAN:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Regular Class Indirect Service | Regular Class Some Direct Instruction | Regular Class/ Resource Room Up to 50% of the Instructional Day in a Resource Room | Some Instruction in Regular Class Minimum of 50% of Instructional Day Self-contained | No Instruction in Regular Class Special Day Service Facility | Residential School | Hospital Program | Homebound Instruction |

B. LIST LESSER RESTRICTIVE PLACEMENT OR PROGRAMMING OPTIONS WHICH THE PLAN DEVELOPERS CONSIDERED AND THE REASONS WHY THOSE OPTIONS WERE REJECTED:

OPTION: _____ REASON: _____

OPTION: _____ REASON: _____

OPTION: _____ REASON: _____

C. RELATED SERVICE: (Transportation, Therapy, Adaptive PE And Specialized Equipment, Materials, Etc.)

80

79 D. DESCRIPTION OF NONACADEMIC SERVICES IN WHICH THE CHILD IS PARTICIPATING (Extra Curricular, Etc.)

68

## C. SAMPLE FORMS FOR SURROGATE PARENTS

SAMPLE FORM SP-1

BY ACTION OF THE BOARD OF EDUCATION OF: _____
School District

ON: _____
Date

WE HEREBY APPROVE: _____
Name of Individual

_____ of _____
Title of Individual Agency Designation

AS THE INDIVIDUAL RESPONSIBLE FOR IMPLEMENTING A SURROGATE PARENT PROGRAM FOR THE DISTRICT.

_____
School Board President

_____
Date

MAIL ONE COPY TO:

Arkansas Department of Education
Special Education Section
Room 105-C, Education Building
Capitol Mall
Little Rock, Arkansas 72201

FORM SP-2

_____, a student of _____,
Name of Student

a public agency or school district, has been referred as a handicapped child who is in need of evaluation to determine his/her need for Special Education Services. After reasonable effort, the whereabouts of a parent, a legal guardian, a stepparent, or a relation acting as a parent could not be discovered; or it has been determined that he/she is a ward of the State. He/she therefore meets the criteria for determination of being in need of a Surrogate Parent.

_____
Name of Agency or District Official

_____
Date

FORM SP-3

NAME: _____ HOME PHONE: _____

ADDRESS: _____ BUSINESS PHONE: _____
Street

_____ DATE OF BIRTH: _____
City State Zip

___ PRIMARY LANGUAGE: _____ RACE: _____ OTHER LANGUAGE: _____
Sex

RELIGION: _____

Your Preferences For A Child To Serve, If Any:

SEX: ____ LANGUAGE: _____ RACE: _____ RELIGION: _____ RACE: _____

NAME: _____

YES NO

( ) ( ) - Are you an employee of an agency or district involved in the education or care of children?

( ) ( ) - Do you have interests or are you engaged in activities that could be considered to conflict with the interests of a child assigned to you?

( ) ( ) - Will you take time to attend meetings related to the child's education programming?

( ) ( ) - Are you willing to take required training to be a Surrogate Parent?

( ) ( ) - Are you willing to inform yourself regarding a child's educational history and the characteristics of his/her handicapping condition that affect learning?

( ) ( ) - Do you expect to be able to serve for at least one school year from the date you are assigned?

List three (3) persons who know you well:

| | Name | Mailing Address | Zip Code |
|---|---|---|---|
| ( ) ( ) 1. | | | |
| ( ) ( ) 2. | | | |
| ( ) ( ) 3. | | | |

Are you affiliated with an organization that is promoting or sponsoring Surrogate Parenting as a public service activity? YES ( ) NO ( )

If yes, name of organization: _____

Do you feel that you have special skills or traits that would make you a good Surrogate Parent?

_____

_____

_____

_____

AGREEMENT

If I consent to be a Surrogate Parent, I promise to:

(a) Keep all information I may receive about the child in strict confidence, while serving and in the future;

(b) Keep the child's caseworker and the Surrogate Parent Program informed of my activities as Surrogate Parent;

(c) Make every effort to serve for twelve months.

Please send completed form to:

Signature: _____

Date: _____

FORM SP-4

_____, a prospective Surrogate Parent has satis-
Surrogate Parent Name

factorily completed the Surrogate Parent Training Program offered by _____

_____, and now meets
Name of Agency or District

qualification requirements of the Arkansas Department of Education.

_____
Name of Trainer

_____
Date

SAMPLE LETTER

Dear Mr. Smith:

This letter is your official appointment by the Boxwood School District Board of Education to serve as a Surrogate Parent for Mary Doe, a fifth grade student who attends Harvard Elementary School. Mary has been referred for consideration for Special Education due to increasing diffculty in participation in the regular class. We believe Mary has a hearing problem. In the near future you will receive correspondence from us about a meeting to discuss with you Mary's referral for Special Education.

Mary's teacher is Mrs. Lois Wise. Please contact Mrs. Wise to make an appointment to talk with her about Mary's school work. She will also make Mary's school record available to you and will arrange for you to meet Mary.

Please let us know if we can be of assistance.

Sincerely,

Ava Bird, Principal
Harvard Elementary School

jh

D. SAMPLE FORMS FOR HEARINGS

SAMPLE - REQUEST FOR HEARING

Originator: Parent or Local Education Agency

Recipient: Both parent/guardian and LEA

Purpose: To request a hearing

(Both parents/guardian and LEA should be provided a copy of this request. LEA then notifies SEA, Special Education Section, by letter. SEA receives pertinent information and initiates the process.)

Because agreement cannot be reached about an appropriate educational program for _____,
(Name of Student)

a hearing is requested.

_____
(Signature of party requesting Hearing)

_____
(Date)

SAMPLE - LETTER TO SEA

Originator: LEA Superintendent or designee

Recipient: Coordinator, Special Education Section

Purpose: To initiate hearing process

Date _____

Coordinator, Special Education Section
Arkansas Department of Education
Education Building C-Room 105C
Little Rock, AR 72201

Dear _____:
(Coordinator)

It is necessary to initiate the hearing process because agreement cannot be reached about an appropriate educational program for _____, a student in our school. Please contact us immediately so that we may give you further information. We will work with you in making the necessary arrangements.
(Name of Student)

Sincerely,

_____
(School Administrator)

SAMPLE: NOTICE OF FILING OF A REQUEST FOR HEARING

Originator: LEA

Recipient: Parent/Guardian

Purpose: To inform that request for hearing has been filed

Date: _____

Dear _____:
(Name of Parents/Guardian)

As we agreed in our previous discussion, we have filed a request for a hearing with the State Department of Education, Special Education Section. A pre-hearing conference is a required step in this process and will be arranged at your convenience.

Please find an enclosure that will inform you of your rights and procedures to be used during this process. If there is need for further explanation, please feel free to call me.

Sincerely,

Superintendent
(Name of School)

Enclosure

(See following page for information that must be included as an enclosure.)

## DUE PROCESS HEARING RIGHTS AND RELATED INFORMATION

1. The parent has the right:

   - to be represented by legal counsel.
   - to bring witnesses.
   - to request certain school personnel to be present.
   - to cross examine.
   - to obtain an independent evaluation.
   - to request a closed hearing if desired.
   - to examine and reproduce all school records.
   - to prohibit introduction of evidence that has not been disclosed at least five (5) days prior to the hearing.

2. A record of the hearing will be made available if requested.

3. If the child has not reached eighteen years of age, the parents shall have the right to determine if the child shall attend the hearing, except on a finding by the hearing officer that attendance would be harmful to the welfare of the child. The child may then be excluded from all or part of the hearing.

4. The burden of proof as to the adequacy and appropriateness of the proposed course of action shall be upon the local education agency.

5. A tape recording or other verbatim record of the hearing shall be made and shall be controlled by the state education agency. The parent and the local education agency shall have the right to this record on request.

6. At all stages of the hearing, interpretation for the deaf and interpreters in the primary language of the home (when other than English) shall be provided at public expense.

7. The child will remain in his/her present educational placement until proceedings are completed unless other arrangements are agreed upon by both school and parent.

8. Parents will be notified fourteen (14) calendar days in advance of hearing unless other arrangements are agreed upon. The limitation of forty-five (45) days for the process must be adhered to.

9. Appeals of the hearing officer's decision may be made to the appropriate court of law by either party.

SPECIAL EDUCATION DUE PROCESS HEARING INFORMATION FORM

SUBMIT TO: Coordinator, Special Education Section
Arkansas Department of Education
State Capitol Mall
Little Rock, Arkansas 72201

Completion of this form by the parents and LEA will provide specific information to the state hearing officer about the pending Due Process Hearing. It should be completed AFTER the pre-hearing conference.

INFORMATION SECTION

I. Date: _____

II. Party requesting the hearing.

Name: _____

Address: _____

_____

Phone: _____

III. Purpose of request.

A special education due process hearing is formally requested to review the _____ recommended
evaluation or placement
for _____.
child's name

IV. Description of the recommendation in question: _____

_____

_____

_____

V. Type of hearing.

At the request of the parents, this hearing ____WILL or ____WILL NOT be open to the public. (Check one)

VI. From the pre-hearing conference with the parents and LEA, it has been shown that:

1. The parents have been given access to all records, reports, and files regarding the child named above.

2. The parents have had the opportunity to inspect and copy these records at a reasonable cost.

3. The parents have been informed of the opportunity to obtain an independent educational evaluation of the child at LEA expense.

4. The parents are aware that they can compel the attendance of any employees or agents of the local education agency, area education agency or state education agency who might have testimony or evidence relative to the question of the needs, abilities, proposed placement or status of the child named above.

5. The parents understand that no changes will be made in the child's present educational status or placement until an impartial hearing officer enters a decision following the hearing.

VII. Persons whose attendance is requested by the parents:

| NAME | TITLE | ADDRESS & PHONE |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

VIII. Persons whose attendance is requested by the LEA:

| NAME | TITLE | ADDRESS & PHONE |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

_____
Signature of Party Requesting Hearing

Note: It is the responsibility of the SEA to inform each of the above-listed persons of the established time, date, and place for the hearing.

PRE-HEARING CONFERENCE REPORT

Arkansas Department of Education
Special Education Section

I. General

A. State Education Agency Employee: _____ (name)

B. Student: _____ (name)

C. Parents or Guardian: _____ (name)

Address: _____

_____

_____

D. School District: _____

Superintendent: _____

Telephone Number: _____

Address: _____

_____

_____

E. Date Hearing Was Requested: _____

by _____ (party)

F. Date of Conference Notification: _____

(Attach copy of School District's letter)

G. Date and Location of Conference: _____

_____

II. Names and Titles of Those Attending the Conference

For the School District:

1. _____ _____
2. _____ _____
3. _____ _____
4. _____ _____

For the Parents:

1. _____ _____
2. _____ _____
3. _____ _____
4. _____ _____

III. State the Source and the Nature of the Complaint

IV. History of Administrative Procedures

List the dates of the conferences which have been conducted prior to the request for a hearing and for each conference, list the names of the persons involved.

| | Dates | Names |
|---|---|---|
| 1. | _____ | _____ |
| | | _____ |
| 2. | _____ | _____ |
| | | _____ |
| 3. | _____ | _____ |
| | | _____ |

V. No Formal Hearing

If the complaint was resolved at the conference, state the agreed course of action.

VI. Formal Hearing Scheduled

If no agreement could be reached at the pre-hearing conference, please supply the following information:

A. Assigned Hearing Officer: _____
(Name)

B. Date of the Hearing: _____

C. Case #: _____ - _____

D. Location and Time of the Hearing: _____

_____

Signature: _____ Date: _____

Special Education Section
Arkansas Department of Education
Education Building "C", Room 105
Little Rock, AR 72201

Hearing # _____ - _____ (_____ vs. _____)

HEARING OFFICER'S REPORT

Arkansas Department of Education
Special Education Section

I. General

A. Hearing Officer: _____
(name)

B. Student: _____ _____
(name)

C. Formal Hearing Began on _____ _____, _____;
(date) (approx. time)

and was concluded on _____, _____;
(date) (approx. time)

D. Location of the Hearing: _____

E. The Formal Hearing Was (check one) / / An Open Hearing

/ / A Closed Hearing

F. Names and Functions of Those Attending the Hearing:

For the School District:

| | (Name) | (Function) |
|---|---|---|
| 1. | _____ | _____ |
| 2. | _____ | _____ |
| 3. | _____ | _____ |
| 4. | _____ | _____ |
| 5. | _____ | _____ |
| 6. | _____ | _____ |
| 7. | _____ | _____ |
| 8. | _____ | _____ |
| 9. | _____ | _____ |
| 10. | _____ | _____ |

Hearing # _____ - _____ (_____ vs. _____)

For the Parents:

| | (Name) | (Function) |
|---|---|---|
| 1. | _____ | _____ |
| 2. | _____ | _____ |
| 3. | _____ | _____ |
| 4. | _____ | _____ |
| 5. | _____ | _____ |
| 6. | _____ | _____ |
| 7. | _____ | _____ |
| 8. | _____ | _____ |
| 9. | _____ | _____ |
| 10. | _____ | _____ |

II. Statement of the Reason for the Hearing

III. Statement of the Facts as the Hearing Officer Finds Them

Hearing # _____ - _____ (_____ vs. _____)

IV. Decision of the Hearing Officer

Signature: _____

Date: _____